TEXAS REGISTER

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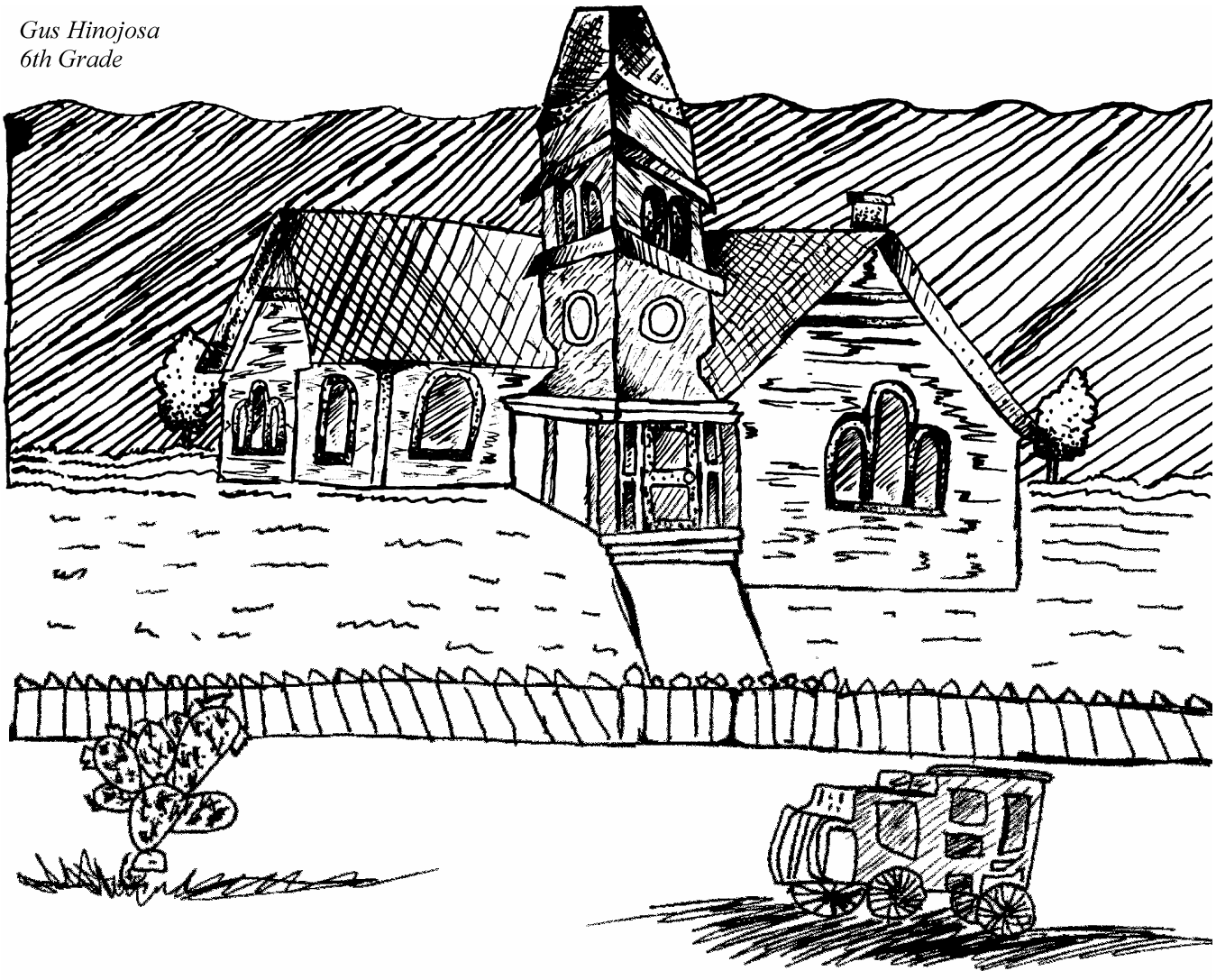
Gus Hinojosa
6th Grade



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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(512) 463-5561
FAX (512) 463-5569
http://www.sos.state.tx.us
register@sos.state.tx.us

IN THIS ISSUE

ADOPTED RULES

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for July 18, 2007

Appointed to the Texas Racing Commission for a term to expire February 1, 2013, Ronald F. Ederer of Fair Oaks Ranch (replacing Michael G. Rutherford of Houston whose term expired).

Appointed to the Texas State Board of Education Chair for a term to expire February 1, 2009, John Donald McLeroy of Bryan (replacing Geraldine Miller of Dallas whose term expired).

Appointments for July 20, 2007

Appointed as Judge of the 329th Judicial District Court, Wharton County, for a term until the next General Election and until his successor shall be duly elected and qualified, Randy Clapp of El Campo. Mr. Clapp is replacing Judge Daniel Richard Sklar who retired.

Appointed to the Texas Council on Purchasing from People with Disabilities for a term to expire January 31, 2013, Les Butler of Fort Worth (replacing Byron E. Johnson of Austin whose term expired).

Appointed to the Texas Council on Purchasing from People with Disabilities for a term to expire January 31, 2013, Kevin M. Jackson of Austin (replacing Robert K. Peters, Ph.D. of Tyler whose term expired).

Appointments for July 21, 2007

Appointed as Judge of the 178th Judicial District Court, Harris County, for a term until the next General Election and until his successor shall be duly elected and qualified, Samuel Roger Bridgwater III of Houston. Mr. Bridgwater is replacing Judge Bill Harmon who retired.

Appointments for July 30, 2007

Appointed to the Texas Mutual Insurance Company Board of Directors for a term to expire July 1, 2013, Robert C. Barnes of Granbury (replacing Martin H. Young of the Woodlands whose term expired).

Appointed to the OneStar Foundation for a term to expire March 15, 2009, Beau Egert of Friendswood (replacing Dr. Marvin Griffin of Austin whose term expired).

Appointed to the OneStar Foundation for a term to expire March 15, 2009, Janine Turner of Dallas (replacing Dr. Doug Stringer of Houston whose term expired).

Appointed to the OneStar Foundation for a term to expire March 15, 2010, Dr. Charles L. Jackson of Houston (Dr. Jackson is being reappointed).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2008, Barry L. Anderson of Grand Prairie (Mr. Anderson is being reappointed).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2008, Michael Kling of Leander (replacing Don Bostic of El Paso whose term expired).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2008, Stuart Babenco of El Paso (replacing David B. Jones of Houston whose term expired).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2008, Courtney Johnson of Waco (replacing Kyle Maxwell of College Station whose term expired).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2009, Connie Roberts of Cedar Park (Ms. Roberts is being reappointed).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2009, Dolores Schwertner of Miles (Ms. Schwertner is being reappointed).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2009, Gregorio Flores III of San Antonio (Mr. Flores is being reappointed).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2009, Art Serna, Jr. of San Marcos (replacing Dr. LaSalle Vaughn of San Antonio whose term expired).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2010, Walter G. Diggles, Sr. of Jasper (Mr. Diggles is being reappointed).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2010, Diana T. Juarez of Laredo (Ms. Juarez is being reappointed).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2010, Martha Tatum of Houston (Ms. Tatum is being reappointed).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2010, Dr. Beverly Ashley-Fridie of Edinburg (replacing Shelton Bady of Spring whose term expired).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2010, Dr. Joseph Zavaletta, Jr. of Brownsville (new position).

Designating Richard Cooper of Lubbock as Presiding Officer of the Texas Mutual Insurance Company Board of Directors for a term at the pleasure of the Governor. Mr. Cooper is replacing Martin H. Young of the Woodlands as presiding officer.

Designating Jesse Adams of Helotes as Presiding Officer of the Texas Racing Commission for a term at the pleasure of the Governor. Mr. Adams is replacing R. Dyke Rogers as presiding officer.

Rick Perry, Governor

TRD-200703355

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Proclamation 41-3129

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of Texas, do hereby amend my June 19, 2007, proclamation to include Anderson, McCulloch, Navarro, Nueces, Upshur, and Walker Counties certifying severe storms, flooding, and tornadoes that occurred from May 23, 2007, and continuing, have caused a disaster in these counties.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby proclaim the existence of such threat and direct that all necessary measures both public and private as authorized under Section 418.015 of the code be implemented to meet that threat.

As provided in section 418.016, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the incident.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 13th day of July, 2007.

Rick Perry, Governor

Attested by: Phil Wilson, Secretary of State

TRD-200703356

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THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Request for Opinions

RQ-0606-GA

Requestor:

The Honorable R. Kelton Conner

Hood County Attorney

1200 West Pearl Street

Granbury, Texas 76048

Re: County responsibility for subdivision roads (RQ-0606-GA)

Briefs requested by August 31, 2007

RQ-0607-GA

Requestor:

The Honorable Jana Duty

Williamson County Attorney

405 M.L.K. Street, Box 7

Georgetown, Texas 78626

Re: Authority of a county judge or county commissioner to hire outside legal counsel without the consent of the elected county or district attorney: Reconsideration of Attorney General Opinions GA-0545 (2007) and GA-0153 (2004) (RQ-0607-GA)

Briefs requested by August 31, 2007

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200703349
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: August 1, 2007

♦ ♦ ♦

Opinions

Opinion No. GA-0556

The Honorable Fred Hill

Chair, Committee on Local Government Ways and Means

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether communications about legal matters between a tax appraisal review board and in-house counsel to a tax appraisal district violate section 41.66 or 6.411 of the Tax Code (RQ-0564-GA)

S U M M A R Y

Legal communications relating to tax protest matters between a tax appraisal district's in-house counsel, who also serves as counsel to the tax appraisal review board for that district, and the review board outside a public hearing would violate Tax Code section 41.66(f), which generally prohibits a review board's ex parte communications relating to property tax protest matters. Section 6.411, which makes ex parte communications between a review board and a district employee a misdemeanor, does not, however, apply to such communications.

Opinion No. GA-0557

The Honorable Craig Watkins

Dallas County Criminal District Attorney

Frank Crowley Courts Building

133 North Industrial Boulevard, LB 19

Dallas, Texas 75207-4313

Re: Whether, under particular circumstances, a former district judge may be employed in the same county in which she sat as a judge (RQ-0565-GA)

S U M M A R Y

The employment of a former district judge as an assistant district attorney, under the particular circumstances, does not violate constitutional and statutory provisions pertaining to dual office holding or conflicts of interest.

The professional conduct of attorneys is governed by the Texas Disciplinary Rules of Professional Conduct. Such rules include prohibitions against appearances of impropriety and conflicts of interest, but violations thereof are to be determined, in the first instance, by the attorney and the disciplinary arm of the Supreme Court of Texas and the State Bar of Texas. Morever, questions about violations of the rules of professional conduct cannot be answered in an attorney general opinion because they involve considerations of fact.

Opinion No. GA-0558

The Honorable Jose R. Rodriguez

El Paso County Attorney

500 East San Antonio, Room 503

El Paso, Texas 79901

Re: Whether a home-rule municipality may lease or sell a portion of an existing city park to a school district (RQ-0566-GA)

S U M M A R Y

A home-rule municipality may lease parkland to an independent school district if the lease will serve a public purpose of the municipality in compliance with Local Government Code section 272.005. If the lease requires the use or taking of parkland, the municipality must hold a hearing and make the determinations required by Texas Parks and Wildlife Code chapter 26. With respect to a lease of public land, Local Government Code section 272.005(b)(3) abrogates the requirement in Parks and Wildlife Code chapter 26 that the municipality notify the public of the school district's proposed use or taking of parkland by publishing notice in a qualifying newspaper of general circulation.

A school district may not enter a lease that commits future revenues, but a school district may enter a long-term lease that allows the school district's board of trustees to terminate the lease at the end of each budget period or is conditioned on the school board's best efforts to obtain and appropriate sufficient funds for the contract, or both. The school district may construct a school and related facilities on the leased property.

A home-rule municipality may sell parkland to an independent school district for no less than fair market value. The municipality must comply with Parks and Wildlife Code chapter 26, including its notice and publication requirements, if the sale requires the use or taking of parkland.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200703347

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: August 1, 2007

TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Requests

AOR-539. The Texas Ethics Commission has been asked to consider whether §255.003 of the Election Code prohibits the spending of city funds for a city council member's newsletter.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; and (9) Chapter 39, Penal Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200703317
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Filed: July 30, 2007

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AOR-540. The Texas Ethics Commission has been asked to consider whether a former employee of a regulatory state agency who worked on the standard specification manual used for agency contracts is prohibited by Government Code, §572.054(b), from working on a private company's bid for contracts that utilize those specifications.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; and (9) Chapter 39, Penal Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200703335
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Filed: July 31, 2007

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 255. FINANCE

1 TAC §255.1

The Commission on State Emergency Communications (CSEC) proposes an amendment to §255.1, concerning the statewide 9-1-1 Equalization Surcharge (the surcharge) to be assessed on each customer receiving intrastate long-distance service except those specifically exempted by law. The proposed amendment raises the surcharge from 1.0% to 1.1%.

Mr. Paul Mallett, CSEC's executive director, has determined that for each of the first five years that the amended section is in effect there will be no cost implications to the state or local governments as a result of enforcing or administering the amended section. Mr. Mallett and CSEC Staff have estimated that a surcharge of 1.1% will generate an estimated $2.69 million above the Texas Comptroller of Public Accounts' (Comptroller) $38.58 million estimate of the surcharge for Fiscal Years 2008 - 2009. Rider No. 5 to CSEC's appropriation bill for Fiscal Years 2008 - 2009 authorizes CSEC to spend up to $1.91 million in excess surcharge revenues to support local 9-1-1 service and the statewide Poison Control Network.

Mr. Mallett has determined that for each year of the first five years the amended section is in effect, the public benefits will be to further increase the reliability of the Councils of Government's 9-1-1 call centers and the operation of the Poison Control Network. Mr. Mallett has also determined the estimated costs to persons who are required to comply with the rule is $1.20 million in Fiscal Year 2008 and $1.56 million in Fiscal Year 2009. Average cost to telecommunications customers, including local governments, of compliance is estimated at $.10 per TN/year in Fiscal Year 2008 and $.13 per TN/year in Fiscal Year 2009 assuming 12 million active TN's in Texas. Mr. Mallett anticipates no local employment impact as a result of enforcing the section. While no historical data is available, the direct impact on small and micro businesses is dependent on the amount of intrastate long distance that is billed on a per-call basis to such businesses.

Comments on the amendment must be submitted in writing within 30 days after publication of the proposal in the Texas Register to Paul Mallett, Executive Director, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942.

The amendment is proposed pursuant to the Health and Safety Code, Chapter 771, §§771.072, 771.073, 771.074, 771.075, 771.077, and 771.078.

No other statute, article, or code is affected by the proposed amendment.

§255.1. Statewide Equalization Surcharge.

An equalization surcharge is established in the amount of one point one percent (1.1% [~~1.0%~~]). Rounding of the surcharge amount shall be in compliance with Texas Tax Code Section 151.053. This surcharge will be assessed to each customer receiving intrastate longdistance service, except those exempted by Texas Health and Safety Code §771.074. The surcharge shall be applied to the total amount for intrastate longdistance service charged by the customer's service provider, but such amount shall not include taxes charged by local, state, and federal authorities, nor shall local, state, or federal taxes be applied to this surcharge unless otherwise required by law. Texas Tax Code §151.025 shall apply when intrastate long-distance services are not billed separately on a customer's invoice. [~~The effective date of the rounding provision in this rule shall be 180 days after the effective date of the remainder of the rule as determined by Texas Government Code §2001.036.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 27, 2007.

TRD-200703261
Paul Mallett
Executive Director
Commission on State Emergency Communications
Earliest possible date of adoption: September 9, 2007
For further information, please call: (512) 305-6930

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.102

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.102, concerning General Principles of Allowable and Unallowable Costs, in its Reimbursement Rates Chapter.

Background and Justification

Currently, all cost report preparers signing the Cost Report Methodology Certification page of the Texas Medicaid long-term care cost reports are required to complete state-sponsored,

classroom-based cost report training conducted by HHSC biennially.

Given technological advances in the area of online training, the costs to preparers to travel to attend classroom-based training in Austin, the staffing requirements and costs involved in providing classroom-based training for all cost report preparers, and the importance of providing consistent training to all cost report preparers, HHSC has been pursuing a multi-phase project to move from classroom-based training to online training. In the first phase of this process, begun in early 2006, certain preparers were allowed to test online in lieu of the classroom-based training, if they had already attended a classroom-based training. As of today, 133 preparers have successfully participated in online testing.

Based on the successful implementation of phase one (online testing), this proposed rule implements phase two (online training) by eliminating classroom-based cost report training for all but new preparers. Under the proposed rule, cost report preparers who have never attended a classroom-based cost report training will continue to be required to attend classroom-based training where they will be able to interact with the rate analysts for their program, ask questions, and benefit from questions raised by other trainees. All other preparers will be required to complete state-sponsored online cost report training; these preparers will not have the option of receiving training completion certificates through classroom-based training.

The online training will include tests for content mastery at the end of each training module. These tests will be designed as teaching tools, with incorrect responses activating links to supports within the module to assist the trainee in mastering the material required to pass the test. Trainees will continue working within each module until they are able to pass the test for that module.

A convenience fee is charged for persons taking the online training, which covers the costs of developing and maintaining the online training materials and automation interface; the state gains no income from the transaction. These fees are allowable costs for Medicaid cost reporting purposes, as are travel costs to complete state-sponsored classroom-based cost report training. Preparers participating in online training will no longer be accruing travel costs to attend classroom-based training in Austin.

Section-by-Section Summary

The proposed amendment removes language in §355.102(d) regarding cost report training being conducted by HHSC at no charge. The amendment removes language that specifies that HHSC conducts the training and substitutes language that specifies that the training will be state-sponsored. Language in §355.102(d) was also moved to §355.102(d)(2) regarding the allowability of travel costs to attend classroom-based training.

Proposed new language was added in §355.102(d)(1) to outline the cost report training requirements of new preparers of cost reports who have not previously attended classroom-based training.

Proposed new language was added in §355.102(d)(2) to outline the cost report training requirements of preparers of cost reports who have previously attended classroom-based training and to explain that a convenience fee will be charged to take the online training.

Language was deleted from §355.102(d)(1) that offered online testing in lieu of cost report classroom-based training for preparers of cost reports that previously attended classroom-based training.

Section 355.102(d)(2) and (3) were renumbered to §355.102(d)(3) and (4) respectively.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that, for the first five-year period the proposed amendment is in effect, there are no fiscal implications for state government as a result of enforcing or administering the section. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Small Business and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no adverse economic effect on small or micro-businesses as a result of enforcing or administering the proposed section. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated effect on local employment in geographic areas affected by this section.

Public Benefit and Costs

Carolyn Pratt, Director of Rate Analysis, has determined that, during the first five years the proposed section is in effect, the public benefits anticipated as a result of enforcing the section include: (1) increased consistency across cost report training experiences; (2) increased convenience for preparers; (3) eliminated travel costs for all preparers, other than new preparers; and (4) reduced administrative burdens for staff in providing classroom-based training.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted by mail to Pam McDonald in the Rate Analysis Division, Texas Health and Human Services Commission, P.O. Box 85200, Austin, TX 78708-5200; by fax to (512) 491-1998; or by e-mail to Pam.McDonald@hhsc.state.tx.us, within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and the Human Resources Code §32.021 and the Texas Government Code

§531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendment affects the Human Resources Code, Chapter 32 and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.102. General Principles of Allowable and Unallowable Costs.

(a) Allowable and unallowable costs. Allowable and unallowable costs, both direct and indirect, are defined to identify expenses that are reasonable and necessary to provide contracted client care and are consistent with federal and state laws and regulations. When a particular type of expense is classified as unallowable, the classification means only that the expense will not be included in the database for reimbursement determination purposes because the expense is not considered reasonable and/or necessary. The classification does not mean that individual contracted providers may not make the expenditure. The description of allowable and unallowable costs is designed to be a general guide and to clarify certain key expense areas. This description is not comprehensive, and the failure to identify a particular cost does not necessarily mean that the cost is an allowable or unallowable cost.

(b) Cost-reporting process. The primary objective of the cost-reporting process is to provide a basis for determining appropriate reimbursement to contracted providers. To achieve this objective, the reimbursement determination process uses allowable cost information reported on cost reports or other surveys. The cost report collects actual allowable costs and other financial and statistical information, as required. Costs may not be imputed and reported on the cost report when no costs were actually incurred (except as stated in §355.103(b)(16)(A)(i) of this title (relating to Specifications for Allowable and Unallowable Costs) or when documentation does not exist for costs even if they were actually incurred during the reporting period.

(c) Accurate cost reporting. Accurate cost reporting is the responsibility of the contracted provider. The contracted provider is responsible for including in the cost report all costs incurred, based on an accrual method of accounting, which are reasonable and necessary, in accordance with allowable and unallowable cost guidelines in this section and in §355.103 of this title, revenue reporting guidelines in §355.104 of this title (relating to Revenues), cost report instructions, and applicable program rules. Reporting all allowable costs on the cost report is the responsibility of the contracted provider. The Texas Health and Human Services Commission (HHSC) is not responsible for the contracted provider's failure to report allowable costs; however, in an effort to collect reliable, accurate, and verifiable financial and statistical data, HHSC is responsible for providing cost report training, general and/or specific cost report instructions, and technical assistance to providers. Furthermore, if unreported and/or understated allowable costs are discovered during the course of an audit desk review or field audit, those allowable costs will be included on the cost report or brought to the attention of the provider to correct by submitting an amended cost report.

(d) Cost report training. [~~HHSC is responsible for conducting, at no charge to the provider, comprehensive cost report training for each contracted program.~~] It is the responsibility of the provider to ensure that each preparer signing the Cost Report Methodology Certification has completed the required state-sponsored cost report training [~~conducted by HHSC~~]. Preparers may be employees of the provider or persons who have been contracted by the provider for the purpose of cost report preparation. Preparers must complete cost report training for each program for which a cost report is submitted. Preparers must complete cost report training every other year for the odd-year cost report in order to receive a certificate to complete both that odd-year cost report and the following even-year cost report. If a new preparer wishes to complete an even-year cost report and has not completed the previous odd-year cost report training, to receive a certificate to complete the even-year cost report, he/she must complete an even-year cost report training. A copy of the most recent cost report training certificate for each preparer of the cost report must be submitted with each cost report. [~~Travel costs to complete state-sponsored cost report training are allowable within the travel limits specified in §355.103(b)(12) of this title.~~] Contracted preparer's fees to complete state-sponsored cost report training are allowable.

(1) New preparers. Preparers, who have not previously completed the required state-sponsored cost report training and received a completion certificate, must attend state-sponsored classroom-based cost report training for each contracted program for which a cost report is to be submitted. Travel costs associated with completing the state-sponsored cost report training are allowable within the travel limits specified in §355.103(b)(12) of this title.

(2) All other preparers. Preparers who are not new preparers as defined in paragraph (1) of this subsection must complete state-sponsored online cost report training and receive a certificate of completion for each program for which a cost report is submitted. These preparers must receive their cost report training online and do not have the option of receiving completion certificates through classroom-based training. Preparers that participate in online training will be assessed a convenience fee, which will be determined by HHSC. Convenience fees assessed for state-sponsored online cost report training are allowable costs. Applicable federal and state accessibility standards apply to online training.

[~~(1) At the discretion of HHSC, cost report preparers may be approved to train and/or test online, or by other methods determined by HHSC, in lieu of the classroom training sessions required in subsection (d) of this section. The criteria that determine whether a cost report preparer may be approved to train and/or test online are determined by HHSC. Preparers who participate in online training and/or testing must pass an online examination in order to receive a certificate of completion for each program for which a cost report is submitted. Preparers that complete classroom session(s) will not be required to pass an examination in order to receive a certificate. HHSC determines the criteria for passing the online examination. Preparers who participate in online training and/or testing and who fail the examination are required to complete the appropriate classroom training session. Preparers approved to participate in online training and/or testing will be assessed a convenience fee, which will be determined by HHSC, whether the preparer passes or fails the online examination. The convenience fees assessed for state-sponsored online cost report training and/or testing are allowable costs. HHSC will provide the criteria for cost report preparers to be approved to participate in online training and/or testing when it mails the training and cost reporting information to providers.~~]

(3) [~~(2)~~] For nursing facilities, failure to file a completed cost report signed by preparers who have completed the required cost report training [~~and/or testing~~] may result in vendor hold as specified in §355.403 of this title (relating to Vendor Hold).

(4) [~~(3)~~] For all other programs, failure to file a completed cost report signed by preparers who have completed the required cost report training [~~and/or testing~~] constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title (relating to Administrative Contract Violations).

(e) Generally accepted accounting principles. Except as otherwise specified by the cost determination process rules of this chapter, cost report instructions, or policy clarifications, cost reports should

be prepared consistent with generally accepted accounting principles (GAAP), which are those principles approved by the American Institute of Certified Public Accountants (AICPA). Internal Revenue Service (IRS) laws and regulations do not necessarily apply in the preparation of the cost report. In cases where cost reporting rules differ from GAAP, IRS, or other authorities, HHSC rules take precedence for provider cost-reporting purposes.

(f) Allowable costs. Allowable costs are expenses, both direct and indirect, that are reasonable and necessary, as defined in paragraphs (1) and (2) of this subsection, and which meet the requirements as specified in subsections (i), (j), and (k) of this section, in the normal conduct of operations to provide contracted client services meeting all pertinent state and federal requirements. Only allowable costs are included in the reimbursement determination process.

(1) "Reasonable" refers to the amount expended. The test of reasonableness includes the expectation that the provider seeks to minimize costs and that the amount expended does not exceed what a prudent and cost-conscious buyer pays for a given item or service. In determining the reasonableness of a given cost, the following are considered:

(A) the restraints or requirements imposed by arm's-length bargaining, i.e., transactions with nonowners or other unrelated parties, federal and state laws and regulations, and contract terms and specifications; and

(B) the action that a prudent person would take in similar circumstances, considering his responsibilities to the public, the government, his employees, clients, shareholders, and members, and the fulfillment of the purpose for which the business was organized.

(2) "Necessary" refers to the relationship of the cost, direct or indirect, incurred by a provider to the provision of contracted client care. Necessary costs are direct and indirect costs that are appropriate in developing and maintaining the required standard of operation for providing client care in accordance with the contract and state and federal regulations. In addition, to qualify as a necessary expense, a direct or indirect cost must meet all of the following requirements:

(A) the expenditure was not for personal or other activities not directly or indirectly related to the provision of contracted services;

(B) the cost does not appear as a specific unallowable cost in §355.103 of this title;

(C) if a direct cost, it bears a significant relationship to contracted client care. To qualify as significant, the elimination of the expenditure would have an adverse impact on client health, safety, or general well-being;

(D) the direct or indirect expense was incurred in the purchase of materials, supplies, or services provided to clients or staff in the normal conduct of operations to provide contracted client care;

(E) the direct or indirect costs are not allocable to or included as a cost of any other program in either the current, a prior, or a future cost-reporting period;

(F) the costs are net of all applicable credits;

(G) allocated costs of each program are adequately substantiated; and

(H) the costs are not prohibited under other pertinent federal, state, or local laws or regulations.

(3) Direct costs are those costs incurred by a provider that are definitely attributable to the operation of providing contracted client services. Direct costs include, but are not limited to, salaries and nonlabor costs necessary for the provision of contracted client care. Whether or not a cost is considered a direct cost depends upon the specific contracted client services covered by the program. In programs in which client meals are covered program services, the salaries of cooks and other food service personnel are direct costs, as are food, nonfood supplies, and other such dietary costs. In programs in which client transportation is a covered program service, the salaries of drivers are direct costs, as are vehicle repairs and maintenance, vehicle insurance and depreciation, and other such client transportation costs.

(4) Indirect costs are those costs that benefit, or contribute to, the operation of providing contracted services, other business components, or the overall contracted entity. These costs could include, but are not limited to, administration salaries and nonlabor costs, building costs, insurance expense, and interest expense. Central office and/or home office administrative expenses are considered indirect costs.

(g) Unallowable costs. Unallowable costs are expenses that are not reasonable or necessary, according to the criteria specified in subsection (f)(1) - (2) of this section and which do not meet the requirements as specified in subsections (i), (j), and (k) of this section or which are specifically enumerated in §355.103 of this title or program-specific reimbursement methodology. Providers must not report as an allowable cost on a cost report a cost that has been determined to be unallowable. Such reporting may constitute fraud. (Refer to §355.106(a) of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports)).

(1) For nursing facilities, placement as an allowable cost on a cost report of a cost which has been determined to be unallowable may result in vendor hold as specified in §355.403 of this title.

(2) For Intermediate Care Facilities for Persons with Mental Retardation, Home and Community-based Services, Service Coordination/Targeted Case Management, Rehabilitative Services, and Texas Home Living programs, placement as an allowable cost on a cost report a cost, which has been determined to be unallowable, constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title.

(3) For all other programs, placement as an allowable cost on a cost report of a cost, which has been determined to be unallowable, constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title.

(h) Other financial and statistical data. The primary purpose of the cost report is to collect allowable costs to be used as a basis for reimbursement determination. In addition, providers may be required on cost reports to provide information in addition to allowable costs to support allowable costs, such as wage surveys, workers' compensation surveys, or other statistical and financial information. Additional data requested may include, when specified and in the appropriate section or line number specified, costs incurred by the provider which are unallowable costs. All information, including other financial and statistical data, shown on a cost report is subject to the documentation and verification procedures required for an audit desk review and/or field audit.

(1) For nursing facilities, inaccuracy in providing, or failure to provide, required financial and statistical data may result in vendor hold as specified in §355.403 of this title.

(2) For Intermediate Care Facilities for Persons with Mental Retardation, Home and Community-based Services, Service Coordination/Targeted Case Management, Rehabilitative Services, and

Texas Home Living programs, inaccuracy in providing, or failure to provide, required financial and statistical data constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title.

(3) For all other programs, inaccuracy in providing, or failure to provide, required financial and statistical data constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title.

(i) Related party transactions.

(1) In determining whether a contracted provider organization is related to a supplying organization, the tests of common ownership and control are to be applied separately. Related to a contracted provider means that the contracted provider to a significant extent is associated or affiliated with, has control of, or is controlled by the organization furnishing the services, equipment, facilities, leases, or supplies. Common ownership exists if an individual or individuals possess any ownership or equity in the contracted provider and the institution or organization serving the contracted provider. Control exists if an individual or an organization has the power, directly or indirectly, to significantly influence or direct the actions or policies of an organization or institution. If the elements of common ownership or control are not present in both organizations, then the organizations are deemed not to be related to each other. The existence of an immediate family relationship will create an irrefutable presumption of relatedness through control or attribution of ownership or equity interests where the significance tests are met. The following persons are considered immediate family for cost-reporting purposes:

(A) husband and wife;

(B) natural parent, child, and sibling;

(C) adopted child and adoptive parent;

(D) stepparent, stepchild, stepsister, and stepbrother;

(E) father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law, and daughter-in-law;

(F) grandparent and grandchild;

(G) uncles and aunts by blood or marriage;

(H) nephews and nieces by blood or marriage; and

(I) first cousins.

(2) A determination as to whether an individual (or individuals) or organization possesses ownership or equity in the contracted provider organization and the supplying organization, so as to consider the organizations related by common ownership, will be made on the basis of the facts and circumstances in each case. This rule applies whether the contracted provider organization or supplying organization is a sole proprietorship, partnership, corporation, trust or estate, or any other form of business organization, proprietary or nonprofit. In the case of a nonprofit organization, ownership or equity interest will be determined by reference to the interest in the assets of the organization, e.g., a reversionary interest provided for in the articles of incorporation of a nonprofit corporation.

(3) The term control includes any kind of control, whether or not it is legally enforceable and however it is exercisable or exercised. It is the reality of the control which is decisive, not its form or the mode of its exercise. The facts and circumstances in each case must be examined to ascertain whether legal or effective control exists. Since a determination made in a specific case represents a conclusion based on the entire body of facts and circumstances involved, such determination should not be used as a precedent in other cases unless the facts and circumstances are substantially the same. Organizations, whether proprietary or nonprofit, are considered to be related through control to their directors in common.

(4) Costs applicable to services, equipment, facilities, leases, or supplies furnished to the contracted provider by organizations related to the provider by common ownership or control are includable in the allowable cost of the provider at the cost to the related organization. However, the cost must not exceed the price of comparable services, equipment, facilities, leases, or supplies that could be purchased or leased elsewhere. The purpose of this principle is twofold: to avoid the payment of a profit factor to the contracted provider through the related organization (whether related by common ownership or control), and to avoid payment of artificially inflated costs which may be generated from less than arm's-length bargaining. The related organization's costs include all actual reasonable costs, direct and indirect, incurred in the furnishing of services, equipment, facilities, leases, or supplies to the provider. The intent is to treat the costs incurred by the supplier as if they were incurred by the contracted provider itself. Therefore, if a cost would be unallowable if incurred by the contracted provider itself, it would be similarly unallowable to the related organization. The principles of reimbursement of contracted provider costs described throughout this title will generally be followed in determining the reasonableness and allowability of the related organization's costs, where application of a principle in a nonprovider entity would be clearly inappropriate.

(5) An exception is provided to the general rule applicable to related organizations. The exception applies if the contracted provider demonstrates by convincing evidence to the satisfaction of HHSC that certain criteria have been met. If all of the conditions of this exception are met, then the charges by the supplier to the contracted provider for such services, equipment, facilities, leases, or supplies are allowable costs. If Medicare has made a determination that a related party situation does not exist or that an exception to the related party definition was granted, HHSC will review the determination made by Medicare to determine if it is applicable to the current situation of the contracted provider and in compliance with this subsection (relating to related party transactions). In order to have the Medicare determination considered for approval by HHSC, a copy of the applicable Medicare determination must accompany each written exception request submitted to HHSC, along with evidence supporting the Medicare determination for the current cost-reporting period. If the exception granted by Medicare no longer is applicable due to changes in circumstances of the contracted provider or because the circumstances do not apply to the contracted provider, HHSC may choose not to consider the Medicare determination. Written requests for an exception to the general rule applicable to related organizations must be submitted for approval to the HHSC Rate Analysis Department no later than 45 days prior to the due date of the cost report in order to be considered for that year's cost report. Each request must include documentation supporting that the contracted provider meets each of the four criteria listed in subparagraphs (A) - (D) of this paragraph. Requests that do not include the required documentation for each criteria will not be considered for that year's cost report.

(A) The supplying organization is a bona fide separate organization. This means that the supplier is a separate sole proprietorship, partnership, joint venture, association or corporation and not merely an operating division of the contracted provider organization.

(B) A majority of the supplying organization's business activity of the type carried on with the contracted provider is transacted with other organizations not related to the contracted provider and the

supplier by common ownership or control and there is an open, competitive market for the type of services, equipment, facilities, leases, or supplies furnished by the organization. In determining whether the activities are of similar type, it is important also to consider the scope of the activity. The requirement that there be an open, competitive market is merely intended to assure that the item supplied has a readily discernible price that is established through arm's-length bargaining by well-informed buyers and sellers.

(C) The services, equipment, facilities, leases, or supplies are those which commonly are obtained by entities such as the contracted provider from other organizations and are not a basic element of contracted client care ordinarily furnished directly to clients by such entities. This requirement means that entities such as the contracted provider typically obtain the services, equipment, facilities, leases, or supplies from outside sources, rather than producing them internally.

(D) The charge to the contracted provider is in line with the charge of such services, equipment, facilities, leases, or supplies in the open, competitive market and no more than the charge made under comparable circumstances to others by the organization for such services, equipment, facilities, leases, or supplies.

(6) Disclosure of all related-party information on the cost report is required for all costs reported by the contracted provider, including related-party transactions occurring at any level in the provider's organization, (e.g., the central office level, and the individual contracted provider level). The contracted provider must make available, upon request, adequate documentation to support the costs incurred by the related party. Such documentation must include an identification of the related person's or organization's total costs, the basis of allocation of direct and indirect costs to the contracted provider, and other business entities served. If a contracted provider fails to provide adequate documentation to substantiate the cost to the related person or organization, then the reported cost is unallowable. For further guidelines regarding adequate documentation, refer to §355.105(b)(2) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(7) When calculating the cost to the related organization, the cost-determination guidelines specified in this section and in §355.103 of this title apply.

(j) Cost allocation. Direct costing must be used whenever reasonably possible. Direct costing means that allowable costs, direct or indirect, (as defined in subsection (f)(3) - (4) of this section) incurred for the benefit of, or directly attributable to, a specific business component must be directly charged to that particular business component. For example, the payroll costs of a direct care employee who works across cost areas within one contracted program would be directly charged to each cost area of that program based upon that employee's continuous daily time sheets and the costs of a direct care employee who works across more than one service delivery area would also be directly charged to each service delivery area based upon that employee's continuous daily time sheets.

(1) If cost allocation is necessary for cost-reporting purposes, contracted providers must use reasonable methods of allocation and must be consistent in their use of allocation methods for cost-reporting purposes across all program areas and business entities.

(A) The allocation method should be a reasonable reflection of the actual business operations. Allocation methods that do not reasonably reflect the actual business operations and resources expended toward each unique business entity are not acceptable. Allocated costs are adjusted if HHSC considers the allocation method to be unreasonable. An indirect allocation method approved by some other department, program, or governmental entity is not automatically approved by HHSC for cost-reporting purposes.

(B) HHSC reviews each cost-reporting allocation method on a case-by-case basis in order to ensure that the reported costs fairly and reasonably represent the operations of the contracted provider. If in the course of an audit it is determined that an existing or approved allocation method does not fairly and reasonably represent the operations of the contracted provider, then an adjustment to the allocation method will be made consistent with subsection (f)(3) - (4) of this section. A contracted provider may request an informal review, and subsequently an appeal, of a decision concerning its allocation methods in accordance with §355.110 of this title (relating to Informal Reviews and Formal Appeals).

(C) Any allocation method used for cost-reporting purposes must be consistently applied across all contracted programs and business entities in which the contracted provider has an interest.

(D) Providers must use an allocation method approved or required by HHSC. Any change in cost-reporting allocation methods from one year to the next must be fully disclosed by the contracted provider on its cost report and must be accompanied by a written explanation of the reasons and justification for such change. If the provider wishes to use an allocation method that is not in compliance with the cost-reporting allocation methods in paragraphs (3) - (4) of this subsection, the contracted provider must obtain written prior approval from HHSC's Rate Analysis Department.

(i) Requests for approval to use an allocation method other than those identified in paragraphs (3) - (4) of this subsection or for approval of a provider's change in cost-reporting allocation method other than those identified in paragraphs (3) - (4) of this subsection must be received by HHSC's Rate Analysis Department prior to the end of the contracted provider's fiscal year. Requests for approval of allocation methods will not be acceptable as a basis for the extension of the cost report due date.

(ii) The HHSC Rate Analysis Department will forward its written decision to the contracted provider within 45 days of its receipt of the provider's original written request. If sufficient documentation is not provided by the provider to verify the acceptability of the allocation method, then HHSC may extend the decision time frame. However, an extension of the due date of the cost report will not be granted. Written decisions made on or after the due date of the cost report will apply to the next year's cost report. A contracted provider may request an informal review, and subsequently an appeal, of a decision concerning its allocation methods in accordance with §355.110 of this title.

(iii) Failure to use an allocation method approved or required by HHSC or to disclose a change in an allocation to HHSC will result in the following.

(I) For nursing facilities, failure to disclose a change in an allocation method or failure to use the allocation method approved or required by HHSC may result in vendor hold as specified in §355.403 of this title.

(II) For Intermediate Care Facilities for Persons with Mental Retardation, Home and Community-based Services, Service Coordination/Targeted Case Management, Rehabilitative Services, and Texas Home Living programs, failure to use the allocation method approved or required by HHSC constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title.

(III) For all other programs, failure to disclose a change in an allocation method or failure to use the allocation method approved or required by HHSC constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title.

(2) Cost-reporting methods for allocating costs must be clearly and completely documented in the contracted provider's workpapers, with details as to how pooled costs are allocated to each segment of the business entity, for both contracted and noncontracted programs.

(A) If a contracted provider has questions regarding the reasonableness of an allocation method, that contracted provider should request written approval from the HHSC Rate Analysis Department prior to submitting a cost report utilizing the allocation method in question. Requests for approval must be received by the HHSC Rate Analysis Department prior to the end of the contracted provider's fiscal year. Requests for approval of allocation methods will not be acceptable as a basis for the extension of the cost report due date.

(B) The HHSC Rate Analysis Department will forward its written decision to the contracted provider within 45 days of its receipt of the original written request. If sufficient documentation is not provided by the provider to verify the acceptability of the allocation method, HHSC may extend the decision time frame. However, an extension of the due date of the cost report will not be granted. Written decisions made on or after the due date of the cost report will apply to the next year's cost report. A contracted provider may request an informal review, and subsequently an appeal, of a decision concerning its allocation methods in accordance with §355.110 of this title.

(3) When a building is shared and the building usage is separate and distinct for each entity using the building, the building costs, identified as building and facility cost categories on the cost report, should be allocated based upon square footage and may not be allocated with other indirect costs as a pool of costs. When the same building space is shared by various entities, the shared building costs, identified as building and facility cost categories on the cost report, should be allocated using a reasonable method which reflects the actual usage, such as an allocation based on time in shared activity areas or a functional study of shared dietary costs related to shared dining and kitchen areas.

(4) Where costs are shared, are not directly chargeable and are allocated as a pool of costs, the following allocation methods are acceptable for cost-reporting purposes.

(A) If all the business components of a contracted provider have equivalent units of equivalent service, indirect costs must be allocated based upon each business component's units of service. For example, if a provider had two nursing facilities, indirect costs requiring allocation as a pool of costs must be allocated based upon each nursing facility's units of service, since the units of service are equivalent units and the services are equivalent services. If a provider had a nursing facility and a residential care program, indirect costs requiring allocation as a pool of costs could not be allocated based upon units of service because even though the units of service for a nursing facility and a residential care facility are equivalent units, the services are not equivalent services. If a home health agency has indirect costs requiring allocation as a pool of costs across its Medicare home health services and its Medicaid primary home care services, it could not use units of service to allocate those costs, since neither the units of service nor the services are equivalent.

(B) If all of a contracted provider's business components are labor-intensive without programmatic residential facility or residential building costs, the contracted provider must allocate its indirect costs requiring allocation as a pool of costs based either on each business component's pro rata share of salaries or labor costs or on a cost-to-cost basis.

(i) For cost-reporting cost allocation purposes, the term "salaries" includes wages paid to employees directly charged to the specific business component. The term "salaries" also includes fees paid to contracted individuals, excluding consultants, who perform services routinely performed by employees, which are directly charged to the specific business component. The term "salaries" does not include payroll taxes and employee benefits associated with the wages of employees.

(ii) For cost-reporting cost-allocation purposes, the term "labor costs" includes salaries as defined in clause (i) of this subparagraph, plus the payroll taxes and employee benefits associated with the wages of the employees.

(iii) The cost-to-cost method allocates costs based upon the percentage of each business component's directly-charged costs to the total directly-charged costs of all business components.

(C) If a contracted provider's business components are mixed, with some being labor-intensive and others having a programmatic residential or institutional component, the contracted provider must allocate its indirect costs requiring allocation as a pool of costs either:

(i) based upon the ratio of each business component's total costs less that business component's facility or building costs, as related to the contracted provider's total business component costs less facility or building costs for all the contracted provider's business components, with "facility or building costs" referring to those cost categories as identified on the cost report; or

(ii) based upon the labor costs method stated in subparagraph (B)(ii) of this paragraph.

(D) In order to achieve a more accurate and representative reporting of costs than results from allocating shared indirect costs as a pool of costs, a provider may choose to allocate its indirect shared expenses on an appropriate and reasonable functional basis. If allocating shared direct client care costs, a provider may use an appropriate and reasonable functional method. For example, costs of a central payroll operation could be allocated to all business components based on the number of checks issued; the costs of a central purchasing function could be allocated based on the number of purchases made or requisitions handled; payroll costs for an administrative employee working across business components could be directly charged based upon that employee's time sheets and/or allocated based upon a documented time study; food costs could be allocated based upon a functional study of shared dietary costs; transportation equipment costs could be allocated based upon mileage logs; and shared laundry costs could be allocated based upon a functional study of the number of pounds/loads of laundry processed. Providers choosing to allocate allowable employee-related self-insurance paid claims in accordance with §355.103(b)(10)(B)(ii) of this title should base the allocation on percentage of salaries of employees benefiting from the coverage for fully self-insured situations or on percentage of premiums of covered employees for partially self-insured situations since purchased premiums must be directly charged.

(E) Because the determination of reimbursement is based on cost data, allocation methods based upon revenue streams are inappropriate and unallowable.

(k) Net expenses. Net expenses are gross expenses less any purchase discounts or returns and allowances. Purchase discounts are cash discounts reducing the purchase price as a result of prompt pay-

ment, quantity purchases, or for other reasons. Purchase returns and allowances are reductions in expenses resulting from returned merchandise or merchandise which is damaged, lost, or incorrectly billed. Only net expenses may be reported on the cost report. Expenses reported on the cost report must be adjusted for all such purchase discounts or returns and allowances.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200703312
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: September 9, 2007
For further information, please call: (512) 424-6900

CHAPTER 355. REIMBURSEMENT RATES

The Texas Health and Human Services Commission (HHSC) proposes to amend two rules in its Reimbursement Rates Chapter relating to care for the aged and disabled: §355.112, concerning Attendant Compensation Rate Enhancement and §355.503, concerning Reimbursement Methodology for the Community-Based Alternatives Waiver Program.

Background and Justification

Texas Government Code, §533.061, as added by House Bill 1771, 79th Legislature, Regular Session, 2005, and the 2006-07 General Appropriations Act (Article II, Special Provisions, Section 49(b), S.B. 1, 79th Legislature, Regular Session, 2005), directed HHSC to develop a non-capitated, enhanced primary care, case management model of Medicaid managed care in the Dallas/Fort Worth area. In response to this direction, HHSC, with the Department of Aging and Disability Services (DADS), developed the Integrated Care Management (ICM) program. Under the ICM program, utilization management, service coordination, and related functions will be performed by a single ICM contractor while direct services will be provided by ICM service providers contracted with DADS. The ICM program is expected to be implemented mid-2007. Upon implementation of the ICM program, DADS Community-Based Alternatives (CBA)-Home and Community Support Services (HCSS) and CBA Assisted Living/Residential Care (AL/RC) contracts in the ICM service area will be cancelled and replaced with ICM-HCSS and ICM AL/RC contracts between the direct service providers and DADS. The provider base and program requirements under these new contracts will remain substantially the same.

The 2000-01 General Appropriations Act (Article II, Department of Human Services, Rider 37, H.B. 1, 76th Legislature, Regular Session, 1999) directed HHSC to incentivize increased compensation for community care attendants. In response to this direction, HHSC developed the Attendant Compensation Rate Enhancement ("Enhancement"). The Enhancement is a voluntary program for providers in certain community-based, long-term care programs. Providers participating in the Enhancement receive higher payment rates for their attendant services and are, in turn, required to spend approximately 90 percent of their total attendant revenues, including their enhanced add-on rate revenues, on attendant compensation. For participants that fail to meet their spending requirements, HHSC recoups their enhanced rate add-on revenues associated with the unmet spending requirements. Current rules limit participation in the Enhancement program to providers contracted in the following programs: Primary Home Care (PHC); Day Activity and Health Services (DAHS); Residential Care (RC); Community Living Assistance and Support Services (CLASS)-Direct Service Agency; CBA-HCSS; Deaf-Blind Multiple Disabilities Waiver (DBMD); and CBA AL/RC.

Section-by-Section Summary

The proposed amendment to §355.112 adds ICM-HCSS and ICM AL/RC to the list of programs eligible to participate in the Enhancement. The amendment also adds language to specify that any references in the rule to CBA program services also apply to the parallel services offered under the ICM program. This amendment will enable CBA-HCSS and CBA AL/RC providers in the ICM service area who are currently participating in the Enhancement to continue participation when their contracts are replaced with ICM-HCSS and ICM AL/RC contracts.

The proposed amendment to §355.503 incorporates ICM-HCSS and ICM AL/RC into the CBA reimbursement methodology. The amendment clarifies that, for reimbursement determination purposes, ICM-HCSS and ICM AL/RC providers are subject to the same cost reporting requirements and are incorporated into the same reimbursement determination methodology as CBA-HCSS and CBA AL/RC providers. The amendment excludes ICM direct service providers from payment for pre-enrollment assessments of potential waiver applicants, since these assessments will be performed by the single ICM contractor.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that, for the first five-year period the proposed amendment is in effect, there are no fiscal implications for state government as a result of enforcing or administering the section. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Small Business and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no adverse economic effect on small or micro-businesses as a result of enforcing or administering the proposed amended section. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated effect on local employment in geographic areas affected by this section.

Public Benefit and Costs

Carolyn Pratt, Director of Rate Analysis, has determined that, during the first five years the proposed amended section is in effect, the public benefit anticipated as a result of enforcing §355.112 is that CBA-HCSS and CBA AL/RC providers in the ICM service area currently participating in the Enhancement will be able to continue participation when their contracts are replaced with ICM-HCSS and ICM AL/RC contracts. This proposed amendment will allow these providers to maintain their current attendant wage and benefit levels. Without the amendment, these providers would receive a lower payment rate under their ICM contract than under their current CBA contract, which, in turn, could lead to providers having to reduce attendant wages and/or benefits.

Ms. Pratt has determined that, during the first five years the proposed amended section is in effect, the public benefit anticipated as a result of enforcing §355.503 is that ICM-HCSS and ICM AL/RC providers will receive appropriate fee-for-service payment rates for services provided under ICM.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted by mail to Sarah Hambrick in the Rate Analysis Division, Texas Health and Human Services Commission, P.O. Box 85200, Austin, TX 78708-5200; by fax at (512) 491-1998; or by e-mail at Sarah.Hambrick@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.112

Statutory Authority

The amendments are proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendments affect the Human Resources Code Chapter 32, and the Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.112. Attendant Compensation Rate Enhancement.

(a) Eligible programs. Providers contracted in the Primary Home Care (PHC); Day Activity and Health Services (DAHS); Residential Care (RC); Community Living Assistance and Support Services (CLASS)--Direct Service Agency; Community Based Alternatives (CBA)--Home and Community Support Services (HCSS); Integrated Care Management (ICM)-HCSS; Deaf-Blind Multiple Disabilities Waiver (DBMD); [~~and~~] CBA--Assisted Living/Residential Care (AL/RC) programs; and ICM AL/RC are eligible to participate in the attendant compensation rate enhancement. References in this section to CBA program services also apply to the parallel services offered under the ICM program.

(b) Definition of attendant. An attendant is the unlicensed caregiver providing direct assistance to the clients with Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL).

(1) In the case of DAHS, RC, and CBA AL/RC programs, the attendant may perform some nonattendant functions. In such cases, the attendant must perform attendant functions at least 80% of his or her total time worked. Staff in these settings not providing attendant services at least 80% of their total time worked are not considered attendants. Time studies must be performed in accordance with §355.105(b)(2)(B)(i) for staff in the DAHS, RC, and CBA AL/RC programs that are not full-time attendants but perform attendant functions to determine if a staff member meets this 80% requirement. Failure to perform the time studies for these staff will result in the staff not being considered to be attendants.

(2) Attendants do not include the director, administrator, assistant director, assistant administrator, clerical and secretarial staff, professional staff, other administrative staff, licensed staff, attendant supervisors, cooks and kitchen staff, maintenance and groundskeeping staff, activity director, and laundry and housekeeping staff. In the case of PHC, CLASS, CBA HCSS, and DBMD staff other than attendants may deliver attendant services and be considered an attendant if they must perform attendant services that cannot be delivered by another attendant to prevent a break in service.

(3) An attendant also includes a driver in the DAHS, RC, and CBA AL/RC programs.

(4) An attendant also includes medication aides in the RC and CBA AL/RC programs.

(c) Attendant compensation cost center. This cost center will include employee compensation, contract labor costs, and personal vehicle mileage reimbursement for attendants as defined in subsection (b) of this section.

(1) Attendant compensation is the allowable compensation for attendants defined in §355.103(b)(1) of this title (relating to Specifications for Allowable and Unallowable Costs) and required to be reported as either salaries and/or wages, including payroll taxes and workers' compensation, or employee benefits. Benefits required by §355.103(b)(1)(A)(iii) of this title (relating to Specifications for Allowable and Unallowable Costs) to be reported as costs applicable to specific cost report line items, except as noted in paragraph (3) of this subsection, are not to be included in this cost center.

(2) Contract labor refers to personnel for whom the contracted provider is not responsible for the payment of payroll taxes, such as FICA, Medicare, and federal and state unemployment insurance, and who perform tasks routinely performed by employees where allowed by program rules. Allowable contract labor costs are defined in §355.103(b)(2)(C) of this title (relating to Specifications for Allowable and Unallowable Costs).

(3) Mileage reimbursement paid to the attendant for the use of his or her personal vehicle and which is not subject to payroll taxes is considered compensation for this cost center.

(d) Rate year. The rate year begins on the first day of September and ends on the last day of August of the following year.

(e) Open enrollment. Open enrollment begins on the first day of July and ends on the last day of that same July preceding the rate year for which payments are being determined, unless the Texas Health and Human Services Commission (HHSC) notified providers before the first day of July that open enrollment has been postponed or cancelled. Should conditions warrant, HHSC may conduct additional enrollment periods during a rate year.

(f) Enrollment contract amendment. An initial enrollment contract amendment is required from each provider choosing to participate in the attendant compensation rate enhancement. On the

initial enrollment contract amendment, the provider must specify for each contract a desire to participate or not to participate. The participating provider must specify for each program the desire to have all participating contracts be considered as a group or as individuals for purposes related to the attendant compensation rate enhancement. For the PHC program, the participating provider must also specify if he wishes to have priority, nonpriority, or both priority and nonpriority services participating in the attendant compensation rate enhancement. If the PHC provider selects to have their contracts participating as a group, then the provider must select to have priority, nonpriority, or both priority and nonpriority services participate for the entire group of contracts. For providers delivering services to both RC and CBA AL/RC clients in the same facility, participation includes both the RC and CBA AL/RC programs. After initial enrollment, participating and nonparticipating providers may request to modify their enrollment status during any open enrollment period. A nonparticipant can request to become a participant; a participant can request to become a nonparticipant; a participant can request to change its participation level; a provider whose participating contracts are being considered as a group can request to have them considered as individuals; and a provider whose participating contracts are being considered as individuals can request to have them considered as a group. Providers whose prior year enrollment was limited by subsection (u) of this section who request to increase their enrollment levels will be limited to increases of three or fewer enhancement levels during any single open enrollment period. Requests to modify a provider's enrollment status during an open enrollment period must be received by HHSC Rate Analysis by the last day of the open enrollment period as per subsection (e) of this section. If the last day of open enrollment is on a weekend day, state holiday, or national holiday, the next business day will be considered the last day requests will be accepted. Providers from which HHSC Rate Analysis has not received an acceptable request to modify their enrollment by the last day of the open enrollment period will continue at the level of participation and group or individual status in effect during the open enrollment period within available funds until the provider notifies HHSC in accordance with subsection (x) of this section that it no longer wishes to participate or until the provider's enrollment is limited in accordance with subsection (u) of this section. To be acceptable, an enrollment contract amendment must be completed according to instructions, signed by an authorized signatory as per the Texas Department of Aging and Disability Services (DADS) Corporate Board of Directors Resolution applicable to the provider's contract or ownership type, and legible.

(g) New contracts. For the purposes of this section, for each rate year a new contract is defined as a contract delivering its first day of service to a DADS client on or after the first day of the open enrollment period, as defined in subsection (e) of this section, for that rate year. Contracts that underwent a contract assignment are not considered new contracts. For purposes of this subsection, an acceptable contract amendment is defined as a legible enrollment contract amendment that has been completed according to instructions, signed by an authorized signator as per the DADS Corporate Board of Directors Resolution applicable to the provider's contract or ownership type, and received by HHSC Rate Analysis within 30 days of the mailing of notification to the provider that such an enrollment contract amendment must be submitted. If the 30th day is on a weekend day, state holiday, or national holiday, the next business day will be considered the last day requests will be accepted. New contracts will receive the nonparticipant attendant compensation rate as specified in subsection (l) of this section with no enhancements. For new contractors specifying their desire to participate in the attendant compensation rate enhancement on an acceptable enrollment contract amendment, the attendant compensation rate is adjusted as specified in subsection (r) of this section, effective on the first day of the month following receipt by HHSC of an acceptable enrollment contract amendment. If the granting of newly requested enhancements was limited by subsection (p)(2)(B) of this section during the most recent enrollment, enrollment for new contracts will be subject to that same limitation. If the most recent enrollment was cancelled by subsection (e) of this section, new contracts will not be permitted to be enrolled.

(h) Attendant Compensation Report submittal requirements. Attendant Compensation Reports must be submitted as follows.

(1) Annual Attendant Compensation Report. All participating contracted providers will provide HHSC Rate Analysis, in a method specified by HHSC Rate Analysis, an annual Attendant Compensation Report reflecting the activities of the provider while delivering contracted services from the first day of the rate year through the last day of the rate year. This report must be submitted for each participating contract if the provider requested participation individually for each contract; or, if the provider requested participation as a group, the report must be submitted as a single aggregate report covering all contracts participating at the end of the rate year within one program of the provider. A participating contract that has been terminated in accordance with subsection (v) of this section or that has undergone a contract assignment in accordance with subsection (w) of this section will be considered to have participated on an individual basis for compliance with reporting requirements for the owner prior to the termination or contract assignment. This report will be used as the basis for determining compliance with the spending requirements and recoupment amounts as described in subsection (s) of this section. Contracted providers failing to submit an acceptable annual Attendant Compensation Report within 60 days of the end of the rate year will be placed on vendor hold until such time as an acceptable report is received and processed by HHSC Rate Analysis.

(A) When a participating provider changes ownership through a contract assignment, the prior owner must submit an Attendant Compensation Report covering the period from the beginning of the rate year to the effective date of the contract assignment as determined by HHSC or its designee. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. The new owner will be required to submit an Attendant Compensation Report covering the period from the day after the date recognized by HHSC or its designee as the contract-assignment effective date to the end of the rate year.

(B) Participating providers whose contracts are terminated voluntarily or involuntarily must submit an Attendant Compensation Report covering the period from the beginning of the rate year to the date recognized by HHSC or its designee as the contract termination date. This report will be used as the basis for determining recoupment as described in subsection (s) of this section.

(C) Participating providers who voluntarily withdraw from participation, as described in subsection (x) of this section, must submit an Attendant Compensation Report within 60 days from the date of withdrawal as determined by HHSC. This report must cover the period from the beginning of the rate year through the date of withdrawal as determined by HHSC and will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section.

(D) Participating providers whose cost report year, as defined in §355.105(b)(5) of this title (relating to General Reporting and Documentation Requirements, Methods and Procedures), coincides with the state of Texas fiscal year, are exempt from the requirement to submit a separate annual Attendant Compensation Report. For these contracts, their cost report will be considered their annual Attendant Compensation Report.

(2) Other reports. HHSC may require other reports from all contracts as needed.

(3) Vendor hold. HHSC or its designee will place on hold the vendor payments for any participating contractor who does not submit an Attendant Compensation Report completed in accordance with all applicable rules and instructions by the due dates described in this subsection. This vendor hold will remain in effect until HHSC Rate Analysis receives an acceptable Attendant Compensation Report. Participating contracts that do not submit an Attendant Compensation Report completed in accordance with all applicable rules and instructions within 60 days of the due dates described in this subsection will become nonparticipants retroactive to the first day of the reporting period in question and will be subject to an immediate recoupment of funds related to participation paid to the facility for services provided during the reporting period in question. These contracts will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC or its designee funds identified for recoupment from subsection (s) of this section. If an acceptable report is not received within 365 days of the due date, the recoupment will become permanent and, if all funds associated with participation during the reporting period in question have been recouped by HHSC or its designee, the vendor hold associated with the report will be released. In addition, participating contracts that have terminated or undergone a contract assignment from one legal entity to a different legal entity that do not submit an Attendant Compensation Report within 60 days of the contract assignment or contract termination effective date will become nonparticipants retroactive to the first day of the reporting period in question. These contracts will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC or its designee funds identified for recoupment under subsection (s) of this section. If an acceptable report is not received within 365 days of the contract assignment or contract termination effective date, the recoupment will become permanent and, if all funds associated with participation during the reporting period in question have been recouped by HHSC or its designee, the vendor hold associated with the report will be released.

(4) Provider-initiated amended Attendant Compensation Reports. Provider-initiated amended Attendant Compensation Reports must be received prior to the date the provider is notified of compliance with spending requirements for the report in question in accordance with subsection (s) of this section.

(i) Attendant Compensation Report contents. Each Attendant Compensation Report will include any information required by HHSC to implement this attendant compensation rate enhancement.

(j) Completion of compensation reports. All Attendant Compensation Reports must be completed in accordance with the provisions of §§355.102 - 355.105 of this title (relating to General Principles of Allowable and Unallowable Costs, Specifications for Allowable and Unallowable Costs, Revenues, and General Reporting and Documentation Requirements, Methods, and Procedures) and may be reviewed or audited in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports). Beginning with the rate year that starts September 1, 2002, all Attendant Compensation Reports must be completed by preparers who have attended the required cost report training for the applicable program under §355.102(d) of this title (relating to General Principles of Allowable and Unallowable Costs). For Attendant Compensation Reports for even numbered state fiscal years, preparers must have attended the cost report training for that same even numbered year. For Attendant Compensation Reports for odd numbered state fiscal years, preparers must have attended the most recent cost report training sessions provided prior to the due date of the Attendant Compensation Report.

(k) Enrollment. Providers choosing to participate in the attendant compensation rate enhancement must submit to HHSC a signed enrollment contract amendment as described in subsection (f) of this section. Participation is determined separately for each program specified in subsection (a) of this section, except that for providers delivering services to both RC and CBA AL/RC clients in the same facility, participation includes both the RC and CBA AL/RC programs. For PHC, participation is also determined separately for priority and nonpriority services. Participation will remain in effect, subject to availability of funds, until the provider notifies HHSC, in accordance with subsection (x) of this section, that it no longer wishes to participate or until HHSC excludes the contract from participation for reasons outlined in subsection (u) of this section. Contracts voluntarily withdrawing from participation will have their participation end effective with the date of withdrawal as determined by HHSC. Contracts excluded from participation will have their participation end effective on the date determined by HHSC.

(l) Determination of attendant compensation rate component for nonparticipating contracts. For each of the programs identified in subsection (a) of this section, HHSC will calculate an attendant compensation rate component for nonparticipating contracts as follows.

(1) Determine for each contract included in the cost report data base used in determination of rates in effect on September 1, 1999, the attendant compensation cost center from subsection (c) of this section.

(2) Adjust the cost center data from paragraph (1) of this subsection in order to account for inflation utilizing the inflation factors used in the determination of the September 1, 1999 rates.

(3) For each contract included in the cost report database used to determine rates in effect on September 1, 1999, divide the result from paragraph (2) of this subsection by the corresponding units of service. Provider projected costs per unit of service are rank-ordered from low to high, along with the provider's corresponding units of service. For DAHS, the median cost per unit of service is selected. For all other programs, the units of service are summed until the median unit of service is reached. The corresponding projected cost per unit of service is the weighted median cost component. The result is multiplied by 1.044 for all programs in subsection (a) of this section except for RC and CBA AL/RC, which is multiplied by 1.07. The result is the attendant compensation rate component for nonparticipating contracts.

(4) The attendant compensation rate component for nonparticipating contracts will remain constant over time, except for adjustments necessitated by increases in the minimum wage. In such cases, adjustments to the nonparticipating rates are limited to ensuring that these rates are adequate to cover mandated minimum wage levels.

(m) Determination of attendant compensation base rate for participating contracts.

(1) For each of the programs identified in subsection (a) of this section except for CBA AL/RC, the attendant compensation base rate is equal to the attendant compensation rate component for nonparticipating contracts from subsection (l) of this section.

(2) For CBA AL/RC, the attendant compensation base rate will be determined by taking into consideration quality of care, labor market conditions, economic factors, and budget constraints.

(n) Determination of attendant compensation rate enhancements. HHSC will determine a per diem add-on payment for each enhanced attendant compensation level using data from sources such as cost reports, surveys, and/or other relevant sources and taking into consideration quality of care, labor market conditions, economic factors, and budget constraints. The attendant compensation rate

enhancement add-ons will be determined on a per-unit-of-service basis applicable to each program or service. Add-on payments may vary by enhancement level.

(o) Enhanced attendant compensation. Contracts desiring to participate in the enhanced attendant compensation rate may request attendant compensation levels from an array of enhanced attendant compensation options and associated add-on payments determined in subsection (n) of this section during open enrollment. Participating providers who select to have all of their contracts participate in a program as a group must request a single attendant compensation level for the entire group of contracts. PHC providers participating as a group must select a single attendant compensation level for their entire group of contracts for the priority and/or nonpriority services they have selected for participation.

(p) Granting attendant compensation rate enhancements. HHSC divides all requested enhancements, after applying any enrollment limitations from subsection (u) of this section, into two groups: pre-existing enhancements, which providers request to carry over from the prior year, and newly-requested enhancements. Newly-requested enhancements may be enhancements requested by providers who were nonparticipants in the prior year or by providers who were participants in the prior year who seek additional enhancements. Using the process described herein, HHSC first determines the distribution of carry-over enhancements. If funds are available after the distribution of carry-over enhancements, HHSC determines the distribution of newly-requested enhancements. HHSC may not distribute newly-requested enhancements to providers owing funds identified for recoupment under subsection (s) of this section.

(1) For all programs and levels except for CBA AL/RC Level 1, HHSC determines projected units of service for contracts requesting each enhancement level and multiplies this number by the enhancement rate add-on amount associated with that enhancement level as determined in subsection (n) of this section. For CBA AL/RC Level 1, HHSC determines projected units of service for CBA AL/RC contracts requesting Level 1 and multiplies this number by the sum of the difference between the base rate and the nonparticipant rate and the enhancement add-on amount associated with enhancement Level 1 as follows: (Base Rate - Nonparticipant Rate) + Level 1 add-on amount.

(2) HHSC compares the sum of the products from paragraph (1) of this subsection to available funds.

(A) If the sum of the products is less than or equal to available funds, all requested enhancements are granted.

(B) If the sum of the products is greater than available funds, enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until requested enhancements are granted within available funds. Based upon an examination of existing compensation levels and compensation needs, HHSC may grant certain enhancement options priority for distribution.

(q) Notification of granting of enhancements. Participating contracts are notified, in a manner determined by HHSC, as to the disposition of their request for attendant compensation rate enhancements.

(r) Total attendant compensation rate for participating providers. Each participating provider's total attendant compensation rate will be equal to the attendant compensation base rate from subsection (m) of this section plus any add-on payments associated with enhanced attendant compensation levels selected by and awarded to the provider during open enrollment.

(s) Spending requirements for participating contracts. HHSC will determine from the Attendant Compensation Report, as specified in subsection (h) of this section and other appropriate data sources, the amount of attendant compensation spending per unit of service delivered. The provider's compliance with the spending requirement is determined based on the total attendant compensation spending as reported on the Attendant Compensation Report for each participating contract if the provider requested participation individually for each contract. A participating contract that has been terminated in accordance with subsection (v) of this section or that has undergone a contract assignment in accordance with subsection (w) of this section will be considered to have participated on an individual basis for compliance with the spending requirement for the owner prior to the termination or contract assignment. In all other cases, if the provider specified that he wished to have all participating contracts be considered as a group for purposes related to the attendant compensation rate enhancement (as specified in subsection (f) of this section) compliance with the spending requirement is based on the total attendant compensation as reported on the single aggregate Attendant Compensation Report described in subsection (h) of this section. Compliance with the spending requirement is determined separately for each program specified in subsection (a) of this section, except for providers delivering services to both RC and CBA AL/RC clients in the same facility whose compliance is determined by combining both programs. HHSC will calculate recoupment, if any, as follows.

(1) For the rate years beginning September 1, 2003 and September 1, 2004, the attendant compensation spending per unit of service is multiplied by 1.10 to determine the adjusted attendant compensation per unit of service. The adjusted attendant compensation per unit of service will be subtracted from the accrued attendant compensation revenue to determine the amount to be recouped. If the adjusted attendant compensation per unit of service is greater than or equal to the accrued attendant compensation revenue per unit of service, there is no recoupment.

(2) For the rate year beginning September 1, 2005, and thereafter, the accrued attendant compensation revenue per unit of service is multiplied by 0.90 to determine the spending requirement per unit of service. The unadjusted accrued attendant compensation spending per unit of service will be subtracted from the spending requirement per unit of service to determine the amount to be recouped. If the unadjusted accrued attendant compensation spending per unit of service is greater than or equal to the spending requirement per unit of service, there is no recoupment.

(3) The amount paid for attendant compensation per unit of service after adjustments for recoupment must not be less than the amount determined for nonparticipating contracts in subsection (l) of this section.

(t) Notification of recoupment. Providers will be notified in a manner specified by HHSC of the amount to be repaid to HHSC or its designee. If a subsequent review by HHSC or audit results in adjustments to the annual Attendant Compensation Report, as described in subsection (h)(1) of this section, that change the amount to be repaid, the provider will be notified in writing of the adjustments and the adjusted amount to be repaid. HHSC or its designee will recoup any amount owed from a provider's vendor payment(s) following the date of the notification letter.

(u) Enrollment limitations. A provider will not be enrolled in the attendant compensation rate enhancement at a level higher than the level it achieved on its most recently available, audited Attendant Compensation Report. HHSC will issue a notification letter that informs a provider in writing of its enrollment limitations (if any) prior to the first day of the open enrollment period.

(1) Requests for revision. A provider may request a revision of its enrollment limitation if the provider's most recently available audited Attendant Compensation Report does not represent its current attendant compensation levels.

(A) A request for revision of enrollment limitation must include the documentation specified in subparagraph (B) of this paragraph and must be received by HHSC Rate Analysis by hand delivery, United States mail, or special delivery mail no later than 30 calendar days from the date on the notification letter. If the 30th calendar day is a weekend day, national holiday, or state holiday, the first business day following the 30th calendar day is the final day the receipt of the written request will be accepted. A request for revision that is not received by the stated deadline and that is not submitted on the form specified by HHSC will not be accepted, and the enrollment limitation specified in the notification letter will apply.

(B) A provider that requests a revision of its enrollment limitation must submit documentation, in the form specified by HHSC in the notification letter, which shows that, for the period beginning September 1 of the current rate year and ending April 30 of the current rate year, the provider met a higher attendant compensation level than the notification letter indicates. In such cases, the provider's enrollment limitation will be established at the level supported by its request for revision documentation. It is the responsibility of the provider to render all required documentation at the time of its request for revision. Requests not in the form specified by HHSC in the notification letter and requests that fail to support an attendant compensation level different from what is indicated in the notification letter will result in a rejection of the request, and the enrollment limitation specified in the notification letter will apply.

(C) A request for revision must be signed by an individual legally responsible for the conduct of the provider or legally authorized to bind the provider, such as the sole proprietor, a partner, a corporate officer, an association officer, a governmental official, a limited liability company member, a person authorized by the applicable DADS Form 2031 for the interested party on file at the time of the request, or a legal representative for the interested party. A request for revision that is not signed by an individual legally responsible for the conduct of the interested party will not be accepted, and the enrollment limitation specified in the notification letter will apply.

(D) If the provider's Attendant Compensation Report for the rate year that included the open enrollment period described in subsection (e) of this section shows the provider compensated attendants below the level it presented in its request for revision, HHSC will immediately recoup all enhancement payments associated with the request for revision documents, and the provider will be limited to the level supported by the report for the remainder of the rate year.

(2) Informal reviews and formal appeals. The filing of a request for an informal review or formal appeal relating to a provider's most recently available, audited Attendant Compensation Report under §355.110 of this title (relating to Informal Reviews and Formal Appeals) does not stay or delay implementation of an enrollment limitation applied in accordance with the requirements of this subsection. If an informal review or formal appeal relating to a provider's most recently available, audited Attendant Compensation Report is pending at the time the enrollment limitation is applied, the result of the informal review or formal appeal shall be applied to the provider's enrollment retroactively to the beginning of the rate year to which the enrollment limitation was originally applied.

(3) New owners after a contract assignment that is an ownership change from one legal entity to a different legal entity. Enhancement levels for a new owner after a contract assignment that is an ownership change from one legal entity to a different legal entity will be determined in accordance with subsection (w) of this section. A new owner after a contract assignment that is an ownership change from one legal entity to a different legal entity will not be subject to enrollment limitations based upon the prior owner's performance.

(4) New providers. A new provider's enrollment will be determined in accordance with subsection (g) of this section.

(v) Contract terminations. For contracted providers required to submit an Attendant Compensation Report due to a contract termination as described in subsection (h)(1)(B) of this section, HHSC or its designee will place a vendor hold on the payments of the contracted provider until HHSC receives an acceptable Attendant Compensation Report, as specified in subsection (h)(2)(A) of this section, and funds identified for recoupment from subsection (s) of this section are repaid to HHSC or its designee. Informal reviews and formal appeals relating to these reports are governed by §355.110 of this title (relating to Informal Reviews and Formal Appeals). HHSC or its designee will recoup any amount owed from the provider's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid from the held vendor payments, the responsible entity from subsection (cc) of this section will be jointly and severally liable for any additional payment due to HHSC or its designee. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in the recoupment of the owed funds from other HHSC and/or DADS contracts controlled by the responsible entity, placement of a vendor hold on all HHSC and/or DADS contracts controlled by the responsible entity, and will bar the responsible entity from enacting new contracts with HHSC and/or DADS until repayment is made in full. The responsible entity for these contracts will be notified as described in subsection (t) of this section prior to the recoupment of owed funds, placement of vendor hold on additional contracts, and barring of new contracts.

(w) Contract assignments. The following applies to contract assignments.

(1) Definitions. The following words and terms have the following meanings when used in this subsection.

(A) Assignee--A legal entity that assumes a Community Care contract through a legal assignment of the contract from the contracting entity as provided in 40 TAC §49.15 (relating to Contract Assignment).

(B) Assignor--A legal entity that assigns its Community Care contract to another legal entity as provided in 40 TAC §49.15 (relating to Contract Assignment).

(C) Contract assignment--The transfer of a contract by one legal entity to another legal entity as provided in 40 TAC §49.15 (relating to Contract Assignment).

(i) Type One Contract Assignment--A contract assignment by which the assignee is an existing Community Care contract.

(ii) Type Two Contract Assignment--A contract assignment by which the assignee is a new Community Care contract.

(2) Participation and group status after a contract assignment. Participation and group status after a contract assignment are determined as follows:

(A) Type One Contract Assignments. For Type One contract assignments, the assignee's level of participation and group status remains the same while the assignor's level of participation and grouping status changes to the assignee's.

(B) Type Two Contract Assignments. For Type Two contract assignments the following applies:

(i) In cases where the assignee is controlled by a legal entity that controls other contracts participating in the attendant compensation rate enhancement, the following applies:

(I) If the assignee's participating contracts are participating as a group as subsection (f) of this section.

(-a-) If the assignor was a participating contract, the new contract becomes part of the assignee's group at the level of participation of the assignee's group.

(-b-) If the assignor was not a participating contract, the new contract remains a nonparticipating contract.

(II) If the assignee's participating contracts are participating as individuals as provided subsection (f) of this section, the following applies:

(-a-) If the assignor was a participating contract, the new contract continues participation at the assignor's level as an individual contract whether or not the assignor contract was part of a group.

(-b-) If the assignor was not a participating contract, the new contract remains a nonparticipating contract.

(ii) In cases where the assignee is controlled by a legal entity that does not control any contracts participating in the attendant compensation rate enhancement, the level of participation and individual or group status of the assignor contract(s) will continue unchanged under the assignee contract(s).

(3) The assignee is responsible for the reporting requirements in subsection (h) of this section for any reporting period days occurring after the contract assignment effective date. If the contract assignment occurs during an open enrollment period as defined in subsection (e) of this section, the owner recognized by HHSC or its designee on the last day of the enrollment period may request to modify the enrollment status of the contract in accordance with subsection (f) of this section.

(4) For contracted providers required to submit an Attendant Compensation Report due to contract assignment, as described in subsection (h)(1)(A) of this section, HHSC or its designee will place a vendor hold on the payments of the existing contracted provider until HHSC receives an acceptable Attendant Compensation Report, as specified in subsection (h)(2)(B) of this section, and until funds identified for recoupment from subsection (s) of this section are repaid to HHSC or its designee. HHSC or its designee will recoup any amount owed from the provider's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid from the held vendor payments, the responsible entity from subsection (cc) of this section will be jointly and severally liable for any additional payment due to HHSC or its designee. Failure to repay the amount due within 60 days of notification will result in the recoupment of the owed funds from other HHSC and/or DADS contracts controlled by the responsible entity, placement of a vendor hold on all HHSC and/or DADS contracts controlled by the responsible entity, and will bar the responsible entity from enacting new contracts with HHSC and/or DADS until repayment is made in full. The responsible entity for these contracts will be notified, as described in subsection (t) of this section, prior to the recoupment of owed funds, placement of vendor hold on additional contracts, and barring of new contract.

(x) Voluntary withdrawal. Participating contracts wishing to withdraw from the attendant compensation rate enhancement must notify HHSC Rate Analysis in writing by certified mail. The requests will be effective the first of the month following the receipt of the request. Contracts voluntarily withdrawing must remain nonparticipants for the remainder of the rate year. Providers whose contracts are participating as a group must request withdrawal of all the contracts in the group.

(y) Adjusting attendant compensation requirements. Providers that determine that they will not be able to meet their attendant compensation requirements may request to reduce their attendant compensation requirements and associated enhancement payment to a lower participation level by submitting a written request to HHSC Rate Analysis by certified mail. These requests will be effective the first of the month following the receipt of the request. Providers whose contracts are participating as a group must request the same reduction for all of the contracts in the group.

(z) All other rate components. All other rate components will continue to be calculated as specified in the program-specific reimbursement methodology and will be uniform for all providers.

(aa) Failure to document spending. Undocumented attendant compensation expenses will be disallowed and will not be used in the determination of the attendant compensation spending per unit of service in subsection (s) of this section.

(bb) Appeals. Subject matter of informal reviews and formal appeals is limited as per §355.110 of this title (relating to Informal Reviews and Formal Appeals).

(cc) Responsible entities. The contracted provider, owner, or legal entity which received the attendant compensation rate enhancement is responsible for the repayment of the recoupment amount.

(dd) Reinvestment. HHSC will reinvest recouped funds in the attendant compensation rate enhancement to the extent there are qualifying contracts.

(1) Identify qualifying contracts. Contracts that meet the following criteria during the most recently completed reporting period are qualifying contracts for reinvestment purposes.

(A) The contract was a participant in the attendant compensation rate enhancement.

(B) The contract's attendant compensation spending per unit of service was greater than the total attendant compensation rate per unit of service granted to the contract.

(C) An acceptable Attendant Compensation Report for the reporting period completed in accordance with all applicable rules and instructions was received by HHSC Rate Analysis at least 30 days prior to the date on which HHSC determined how available reinvestment funds would be distributed.

(D) The DADS contract that was in effect during the reinvestment reporting period is still in effect as an active contract when reinvestment is determined and there has been no ownership change from one legal entity to a different legal entity.

(2) Distribution of available reinvestment funds. Available funds are distributed as follows:

(A) For each qualifying report, HHSC subtracts the attendant compensation revenue per unit of service from the attendant compensation spending per unit of service and determines the number of full levels by which attendant compensation costs exceeded attendant compensation revenues. This number is multiplied by the add-on value of a level during the reporting period and the product is multiplied by the units of service provided during the reporting period as determined by HHSC.

(B) HHSC compares the sum of the products from subparagraph (A) of this paragraph to funds available for reinvestment.

(i) If the product is less than or equal to available funds, all enhancements for qualifying contracts are retroactively awarded for the reporting period.

(ii) If the product is greater than available funds, retroactive enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until enhancements are granted within available funds.

(3) Non-qualification as pre-existing enhancements. Retroactively awarded enhancements do not qualify as pre-existing enhancements for enrollment purposes.

(4) Notification of reinvested enhancements. Qualifying facilities are notified of the award of reinvested enhancements in a manner determined by HHSC.

(ee) Disclaimer. Nothing in these rules should be construed as preventing providers from compensating attendants at a level above that funded by the enhanced attendant compensation rate.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §355.503

Statutory Authority

The amendments are proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendments affect the Human Resources Code Chapter 32, and the Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.503. Reimbursement Methodology for the Community-Based Alternatives Waiver Program and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Programs.

(a) General requirements. The Texas Health and Human Services Commission (HHSC) applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction). Unless specifically stated otherwise, references in this section to the Community-Based Alternatives (CBA) waiver program services also apply to the parallel services offered under the Integrated Care Management (ICM) waiver program.

(b) General. Texas Medicaid contracted providers will be reimbursed for waiver services provided to individuals who meet the criteria for alternatives to nursing facility care. Additionally, non-ICM Texas Medicaid contracted providers will be reimbursed for a pre-enrollment assessment of potential waiver participants. The pre-enrollment assessment covers care planning for the participant and is reimbursed by a one-time administrative expense fee which is not included in the waiver services but will be paid from Medicaid administrative funds.

(c) Other sources of cost information. If HHSC has determined that there is not sufficient reliable cost report data from which to determine reimbursements and reimbursement ceilings for waiver services, reimbursements and reimbursement ceilings will be developed by using data from surveys; cost report data from other similar programs, consultation with other service providers and/or professionals experienced in delivering contracted services; and other sources.

(d) Waiver reimbursement determination. Recommended reimbursements are determined in the following manner.

(1) Unit of service reimbursement. Reimbursement for personal assistance services, nursing services provided by a registered nurse (RN), nursing services provided by a licensed vocational nurse (LVN), physical therapy, occupational therapy, speech pathology, and in-home respite care services will be determined on a fee-for-service basis in the following manner.

(A) Total allowable costs for each provider will be determined by analyzing the allowable historical costs reported on the cost report.

(B) Total allowable costs are reduced by the amount of the pre-enrollment expense fee and requisition fee revenues accrued for the reporting period.

(C) Each provider's total reported allowable costs, excluding depreciation and mortgage interest, are projected from the historical cost-reporting period to the prospective reimbursement period as described in §355.108 of this title (relating to Determination of Inflation Indices). The prospective reimbursement period is the period of time that the reimbursement is expected to be in effect.

(D) Payroll taxes and employee benefits are allocated to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense for the appropriate group of staff. Employee benefits will be charged to a specific salary line item if the benefits are reported separately. The allocated payroll taxes are Federal Insurance Contributions Act (FICA) or Social Security, Medicare Contributions, Workers' Compensation Insurance (WCI), the Federal Unemployment Tax Act (FUTA), and the Texas Unemployment Compensation Act (TUCA).

(E) Allowable administrative and facility costs are allocated or spread to each waiver service cost component on a pro rata basis based on the portion of each waiver service's units of service to the amount of total waiver units of service.

(F) For nursing services provided by an RN, nursing services provided by an LVN, physical therapy, occupational therapy, speech pathology, and in-home respite care services, an allowable cost per unit of service is calculated for each contracted provider for each service. The allowable costs per unit of service for each contracted provider are arrayed. The units of service for each contracted provider in the array are summed until the median unit of service is reached. The corresponding expense to the median unit of service is determined and is multiplied by 1.044. The allowable costs per unit of service may be combined into an array with the allowable cost per unit of service of similar services provided by other programs in determining the weighted median cost per unit of service.

(G) For personal assistance services two cost areas are created:

(i) The attendant cost area includes salaries, wages, benefits, and mileage reimbursement calculated as specified in §355.112 of this title (relating to Attendant Compensation Rate Enhancement).

(ii) Another attendant cost area is created which includes the other personal attendant services costs not included in subparagraph (G)(i) of this paragraph as determined in subparagraphs (A) - (E) of this paragraph. An allowable cost per unit of service is determined for each contracted provider for the other attendant cost area. The allowable costs per unit of service for each contracted provider are arrayed. The units of service for each contracted provider in the array are summed until the median unit of service is reached. The corresponding expense to the median unit of service is determined and is multiplied by 1.044.

(iii) The attendant cost area and the other attendant cost area are summed to determine the personal assistance services cost per unit of service.

(2) Per day reimbursement.

(A) The reimbursement for Adult Foster Care (AFC) and out-of-home respite care will be determined as a per day reimbursement using a method based on modeled projected expenses which are developed by using data from surveys; cost report data from other similar programs, consultation with other service providers and/or professionals experienced in delivering contracted services; and other sources. The room and board payments for AFC Services are not covered in these reimbursements and will be paid to providers from the client's Supplemental Security Income, less a personal needs allowance.

(B) The reimbursement for Assisted Living/Residential Care (AL/RC) will be determined as a per day reimbursement in accordance with §355.509(a) - (c)(2)(F)(iii) of this title (relating to Reimbursement Methodology for Residential Care). The per day reimbursement for attendant care will be determined, based upon client need for attendant care into six levels of care. A total reimbursement amount will be calculated and the proposed reimbursement is equal to the total reimbursement less the client's room and board payments. The room and board payment is paid to the provider by the client from the client's Supplemental Security Income (SSI), less a personal needs allowance. When the SSI is increased or decreased by the Federal Social Security Administration, the reimbursement for AL/RC will be adjusted in amounts equal to the increase or decrease in SSI received by clients.

(C) The reimbursement for out-of-home respite care provided in a Nursing Facility will be based on the amount determined for the Texas Index of Level of Effort (TILE) for the CBA participant.

(3) Monthly reimbursement ceilings. The reimbursement for Emergency Response Services will be determined as monthly reimbursement ceiling, based on the ceiling amount determined in accordance with 40 TAC §52.504 (relating to Reimbursement Methodology for Emergency Response Services (ERS)). The reimbursement for Home-Delivered Meals will be determined on a per meal basis, based on the ceiling amount determined in accordance with 40 TAC §55.45 (relating to Reimbursement Methodology for Home-Delivered Meals).

(4) Requisition fees. Requisition fees are reimbursements paid to the CBA home and community support services contracted providers for their efforts in acquiring adaptive aids and minor home modifications for CBA participants. Reimbursement for adaptive aids and minor home modifications will vary based on the actual cost of the adaptive aid and minor home modification. Reimbursements are determined using a method based on modeled projected expenses which are developed by using data from surveys; cost report data from similar programs; consultation with other service providers and/or professionals experienced in delivering contracted services; and/or other sources.

(5) Pre-enrollment expense fee. Reimbursement for pre-enrollment assessment is determined using a method based on modeled projected expenses that are developed by using data from surveys; cost report data from other similar programs; consultation with other service providers and/or professionals experienced in delivering contracted services; and other sources.

(6) Specialized nursing reimbursement add-on. A specialized nursing reimbursement add-on will be paid in addition to the unit-of-service reimbursements for skilled nursing services provided by an RN or by an LVN. The specialized nursing reimbursement add-on is paid when a client requires, as determined by a physician, daily skilled nursing to cleanse, dress, and suction a tracheostomy or daily skilled nursing assistance with ventilator or respirator care. The client must be unable to do self-care and require the assistance of a nurse for the ventilator, respirator, or tracheostomy care. This specialized nursing reimbursement add-on will be determined in accordance with subsection (c) of this section.

(7) Exceptions to the reimbursement determination methodology. HHSC may adjust reimbursement if new legislation, regulations, or economic factors affect costs, according to §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(e) Authority to determine reimbursement. The authority to determine reimbursement is specified in §355.101 of this title (relating to Introduction).

(f) Reporting of cost.

(1) Cost reporting guidelines. If HHSC requires a cost report for any waiver service in this program, providers must follow the cost-reporting guidelines as specified in §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(2) Excused from submission of cost reports. If required by HHSC, all contracted providers must submit a cost report unless the number of days between the date the first Texas Department of Aging and Disability Services (DADS) client received services and the provider's fiscal year end is 30 days or fewer. The provider may be excused from submitting a cost report if circumstances beyond the control of the provider make cost-report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider's custody by any regulatory agency. An AL/RC provider may also be excused from submitting a cost report if the total number of days serving AL/RC or Residential Care residents is 366 or fewer during its fiscal year. Requests to be excused from submitting a cost report must be received by HHSC before the due date of the cost report.

(3) Reporting and verification of allowable cost.

(A) Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursements. HHSC excludes from reimbursement determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers; the purpose is to ensure that the database reflects costs and other information which are necessary for the provision of services, and are consistent with federal and state regulations.

(B) Individual cost reports may not be included in the database used for reimbursement determination if:

(i) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(ii) an auditor determines that reported costs are not verifiable.

(C) When material pertinent to proposed reimbursements is made available to the public, the material will include the number of cost reports eliminated from reimbursement determination for the reason stated in subparagraph (B)(i) of this paragraph.

(4) Allowable and unallowable costs. Providers must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs, and Specifications for Allowable and Unallowable Costs), in addition to the following.

(A) Client room and board expenses are not allowable, except for those related to respite care.

(B) The actual cost of adaptive aids and home modifications are not allowable for cost reporting purposes. Allowable labor costs associated with acquiring adaptive aids and home modifications should be reported in the cost report. Any item purchased for participants in this program and reimbursed through a voucher payment system is unallowable for cost reporting purposes. Refer to §355.103(17)(K) of this title (relating to Specifications for Allowable and Unallowable Costs).

(g) Reporting revenue. Revenues must be reported on the cost report in accordance with §355.104 of this title (relating to Revenues).

(h) Reviews and field audits of cost reports. Desk reviews or field audits are performed on cost reports for all contracted providers. The frequency and nature of the field audits are determined by HHSC to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and providers will be notified of the results of a desk review or a field audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments). Providers may request an informal review and, if necessary, an administrative hearing to dispute an action taken under §355.110 of this title (relating to Informal Reviews and Formal Appeals).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200703314
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §355.311

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.311, concerning Medicaid Reimbursement Rates for State Veterans Homes in Title 1, Subchapter C, Chapter 355, Reimbursement Rates.

Background and Purpose

The purpose of the proposed amendment is to update outdated agency references and to bring the rule into compliance with §202 of Public Law 108-422.

The Veterans Administration (VA) pays a per diem to State homes providing nursing home care to eligible veterans under 38 C.F.R. Part 51. The payment system is intended to ensure that veterans receive high quality care in State homes.

The Medicaid program by law is intended to be the payer of last resort; that is, all other available third party resources must meet their legal obligation to pay claims before the Medicaid program pays for the care of an individual eligible for Medicaid. Prior to the passage of Public Law 108-422, the VA's per diem payments were considered third-party resources. Public Law 108-422 clarified that per diem payments made by the VA for care of veterans in State veterans homes should not be used to offset or reduce other payments made to assist veterans.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that, for the first five-year period the proposed amendment is in effect, there are foreseeable fiscal implications for state government as a result of enforcing or administering the amended section. There are no foreseeable fiscal implications for local governments as a result of enforcing or administering the amended section.

The effect on state government for the first five years the proposed amendment is in effect is an estimated additional cost of $1,272,120 in fiscal year (FY) 2008; $1,285,045 in FY 2009; $1,286,331 in FY 2010; $1,286,331 in FY 2011; and $1,289,855 in FY 2012.

Small Business and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no adverse economic effect on small or micro-businesses as a result of enforcing or administering the proposed amended section. There is no anticipated economic cost to persons who are required to comply with the proposed amendment. There is no anticipated effect on local employment in geographic areas affected by this proposed amended section.

Public Benefit and Costs

Carolyn Pratt, Director of Rate Analysis, has determined that, during the first five years the proposed amended section is in effect, the public benefits anticipated as a result of enforcing the section include: (1) greater provider understanding of the rule and (2) compliance with Public Law 108-422.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Cilla Hammer in the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, Austin, TX 78708-5200; by fax (512) 491-1983 or by e-mail at Cilla.Hammer@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.311. Medicaid Reimbursement Rates for State Veterans Homes.

(a) The following definitions apply to this section:

(1) Health and Human Services Commission (HHSC)--The state administrative agency authorized to adopt standards and rules to govern reimbursement rates and methodologies for Medicaid nursing facility services pursuant to Government Code §531.021.

(2) Rate period--The state fiscal year.

(3) State veterans home--A nursing facility as defined in Title 40, Texas Administrative Code (TAC) §176.1 (relating to Definitions) that is contracted with the Department of Aging and Disability Services (DADS) [~~DHS~~] under 40 TAC §19.2322 (relating to Medicaid Bed Allocation Requirements) to provide nursing facility services to eligible Medicaid recipients who reside in a state veterans home.

(4) Department of Aging and Disability Services (DADS) [~~Texas Department of Human Services (DHS)~~]--The state administrative agency authorized to contract for nursing facility services to Medicaid recipients pursuant to Chapter 32, Human Resources Code.

(5) Veterans Land Board (VLB)--The state administrative agency authorized under Chapter 164, Natural Resources Code, to establish and operate state veterans homes.

(b) DADS [~~DHS~~] reimburses the VLB for nursing facility services provided by the VLB to Medicaid clients in state veterans homes.

(c) HHSC determines reimbursement rates for state veterans homes to provide nursing facility services.

(d) Interim reimbursement rates for state veterans homes are determined prospectively for each home based on the state veterans home semi-private basic daily rate in effect on the first day of the rate period. Rates are reconciled retrospectively based on actual cost in accordance with subsection (j) of this section.

(e) The facility-specific payment rate, as determined in subsection (d) of this section, will be paid for all Medicaid eligible residents of a state veterans home regardless of the Texas Index for Level of Effort (TILE) level of the resident

(f) Veterans Administration (VA) per diem payments to the State of Texas VLB for nursing home care as defined in 38 Code of Federal Regulations (CFR) §51.40 (relating to monthly payment) [~~are considered third-party resources under 40 TAC §15.215 (relating to Third-party Resources (TPRs)). These payments~~] are not offset against per diem payment rates for Medicaid-eligible residents of a state veterans home.

(g) Residents of a state veterans home are not eligible to receive the supplemental reimbursements authorized under §355.307(b)(3)(E) and (F) of this title (relating to Reimbursement Setting Methodology).

(h) State veterans homes are not eligible to participate in §355.308 of this title (relating to Direct Care Staff Rate Component).

(i) The VLB submits financial and statistical information in a format designated by HHSC. The financial and statistical information must be completed in accordance with the provisions of §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs; and Specifications for Allowable and Unallowable Costs). This information may be reviewed or audited in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports). Financial and statistical information submitted by the VLB is not included in the cost report databases used in the reimbursement determination process for the Texas Medicaid Nursing Facility program.

(j) For each state veterans home, the interim reimbursement rate is adjusted retrospectively based on actual costs accrued during the rate period.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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1 TAC §355.312

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.312, Reimbursement Setting Methodology--Liability Insurance Costs in Title 1, Part 15, Subchapter C, Reimbursement Rates. The rule and related proposed rate change will be effective upon adoption.

Background and Justification

The purpose of the proposed amendment is to correct an error in the due date for captive insurance premium taxes to be paid to the Texas Comptroller of Public Accounts (the Comptroller). This correction will make HHSC's due date equal to the Comptroller's due date and will bring HHSC in compliance with the Comptroller's requirements.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that, for the first five-year period the proposed amendment is in effect, there are no fiscal implications for state government as a result of enforcing or adminis-

tering the section. There are no fiscal implications for local governments as a result of enforcing or administering the proposed amended section.

Small Business and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no adverse economic effect on small or micro-businesses as a result of enforcing or administering the proposed amended section. There is no anticipated economic cost to persons who are required to comply with the proposed amendment. There is no anticipated effect on local employment in geographic areas affected by this proposed amended section.

Public Benefit and Costs

Carolyn Pratt, Director of Rate Analysis, has determined that, during the first five years the proposed amended section is in effect, the public benefits anticipated as a result of enforcing the section include: (1) greater understanding of the rule and (2) continuity of deadlines between the Texas Comptroller of Public Accounts and HHSC.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Cilla Hammer in the Rate Analysis Division, Texas Health and Human Services Commission, P.O. Box 85200, Austin, TX 78708-5200; by fax (512) 491-1983 or by e-mail at Cilla.Hammer@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.312. Reimbursement Setting Methodology--Liability Insurance Costs.

(a) Definitions.

(1) Purchased commercial liability insurance--Either general or professional liability insurance from a commercial carrier or a non-profit service corporation in an arm's-length transaction that provides for the shifting of risk to the unrelated party. The commercial carrier or non-profit service corporation must meet the requirements as set by the Texas Department of Insurance (TDI) for authorized insurance.

(2) Self-insurance--Self-insurance is a means whereby a contracted provider undertakes the risk to protect itself against anticipated liabilities by providing funds equivalent to liquidate those liabilities. If a contracted provider enters into an arrangement with an unrelated party that does not provide for the shifting of risk to the unrelated party, such an agreement shall be considered self-insurance. Self-insurance is not purchased liability insurance.

(3) Independently procured insurance--an insurance transaction involving an insurance contract independently procured from an insurance company not licensed in Texas through negotiations occurring entirely outside the state of Texas that is reported and on which premium tax is paid.

(4) Purchased captive insurance--A company providing either general or professional liability insurance purchased from a nonadmitted captive insurance company that insures solely directors and officer's liability insurance for the directors and officers of the company's parent and affiliated companies and/or the risks of the company's parent and affiliated companies.

(b) Payment rates for purchased general and professional liability insurance will be determined as follows:

(1) Determine the portion of the general/administration rate component from 1 TAC §355.307 (relating to Reimbursement Setting Methodology) attributable to allowable liability insurance costs.

(2) Determine the amount of total dollars that would be expended if the liability rate component from paragraph (1) of this subsection were paid uniformly to all providers during the rate effective period.

(3) Estimate the number of days of service that will be covered by purchased liability insurance during the rate period.

(4) Divide the total dollars available for liability insurance from paragraph (2) of this subsection by the estimated number of days of service that will be covered by purchased liability insurance during the rate period from paragraph (3) of this subsection. Estimate the proportion of this per diem amount accruing from general liability insurance and the proportion accruing from professional liability insurance to determine the payment rate for each day of purchased general liability insurance and the payment rate for each day of purchased professional liability insurance.

(5) Payment rates for purchased general and professional liability insurance may be adjusted as often as HHSC determines is necessary to ensure that the total dollars expended during the rate period do not exceed the amount appropriated for this purpose.

(6) Since these payment rates are determined through an allocation of available appropriations among estimated units of service covered by purchased liability insurance, a public rate hearing is not required when adjustments are made to the payment rates.

(7) Contracted providers will be notified, in a manner determined by HHSC, of adjustments to the payment rates for purchased general and professional liability insurance.

(8) Contracted providers who purchase general liability insurance without professional liability insurance are only eligible to receive payment of the rate for purchased general liability insurance. Contracted providers who purchase professional liability insurance

without general liability insurance are only eligible to receive payment of the rate for purchased professional liability insurance. Contracted providers who purchase both general and professional liability insurance are eligible to receive payment of both rates.

(c) Purchased liability insurance issued through entities meeting any one of the following criteria will be determined automatically to qualify for the payment rates for purchased general and/or professional liability insurance as appropriate. These entities have been determined by the TDI to be authorized to issue liability insurance policies in the State of Texas.

(1) An insurance company identified as an admitted, licensed, insurer authorized to write liability insurance in Texas. This type of insurance company is designated as "active" on the TDI website. This includes risk retention groups chartered inside the state of Texas.

(2) An insurance company that is an eligible surplus lines insurer which requires that there be a Texas licensed surplus lines agent placing the coverage with the insurance company. This type of insurance company is designated as "eligible" on the TDI website.

(3) The Texas Medical Liability Insurance Underwriting Association (JUA). This insurance arrangement is designated as "active" on the TDI website.

(4) A risk retention group chartered outside the state of Texas that is registered with the TDI and which is designated as "registered" on the TDI website.

(d) Independently procured insurance will not be determined automatically to qualify for the payment rates for purchased general and/or professional liability insurance. To qualify for the purchased general and/or professional liability insurance payment rates, the coverage must have been purchased through an independently procured insurance arrangement. The liability insurance payment rates will not be paid to any nursing facility contracted provider until HHSC Rate Analysis has received from the contracted provider a signed and notarized affidavit in the form provided by HHSC regarding the circumstances of the solicitation and procurement of coverage. An authorized signatory for the contracted provider as per the Department of Aging and Disability Services (DADS) Form 2031 must sign the affidavit. HHSC may request additional information to support the contents of the affidavit. The affidavit and supporting information will be reviewed by HHSC to determine if the information supplied is correct and complete to authorize payment of rates for purchased general and/or professional liability insurance. Upon receipt and review of the affidavit and supporting information and a determination that the information is correct and complete to authorize payments, payments will be made as identified in subsection (h) of this section. HHSC may refer any questionable case to the TDI to determine if a violation of the Texas Insurance Code has occurred. The liability insurance payment rates will continue to be paid if evidence that taxes on the premiums of independently procured insurance were paid to and received by the Texas Comptroller for the calendar year in which the policy is procured, continued or renewed. Evidence of the annual taxes paid to and received by the Texas Comptroller for the independently procured insurance in which the policy has been procured, continued or renewed must be received by HHSC Rate Analysis no later than the end of the business day on June 15 following the applicable calendar year. Failure to provide HHSC by June 15 with evidence that premium taxes have been paid will result in the discontinuation of the liability insurance rate add-on. If June 15 falls on a weekend, a national holiday, or a state holiday, then the first business day following June 15 of that year is the due date for the evidence of taxes paid. If acceptable evidence that taxes have been paid has not been received by HHSC within 60 days after the June 15 deadline, HHSC will recoup any add-on payments made to the contracted provider for the period in which taxes are unpaid. Once HHSC Rate Analysis receives evidence of taxes paid to the Texas Comptroller, HHSC will restore any add-on payments for that period previously withheld or recouped. Any vendor hold placed under 40 TAC §19.2308 (relating to Change of Ownership) will remain in place until evidence that all taxes on the premiums are paid to and received by the Texas Comptroller for all time periods for which the liability insurance add-on rate was paid to the contracted provider.

(e) Insurance purchased through a captive insurance company will not be determined automatically to qualify for the payment rates for purchased general and/or professional liability insurance. The liability insurance payment rates will not be paid to any nursing facility contracted provider until HHSC Rate Analysis has received from the contracted provider a signed and notarized affidavit in the form provided by HHSC and any requested supporting information regarding the financial arrangements and affiliation between the contracted provider and the captive insurance company. An authorized signatory for the contracted provider as per DADS Form 2031 must sign the affidavit. HHSC may request additional information to support the contents of the affidavit. The affidavit and supporting information will be reviewed by HHSC to determine if the information supplied is correct and complete to authorize payment of rates for purchased general and/or professional liability insurance. Payments will be made as identified in subsection (h) of this section. Insurance purchased through an "active" or "eligible" insurance company will automatically qualify for the payment rate for purchased general an/or professional liability insurance, regardless of whether such risk has been reinsured by a captive insurance company. It is the responsibility of the nursing facility to obtain any requested information from the captive insurance company or affiliates. HHSC may refer any questionable cases to TDI to determine if a violation of the Texas Insurance Code has occurred. The liability insurance payment rates will continue to be paid if evidence that taxes on the premiums of captive insurance were paid to and received by the Texas Comptroller for the calendar year in which the policy is procured, continued or renewed. Evidence of the annual taxes paid to and received by the Texas Comptroller for the captive insurance in which the policy has been procured, continued or renewed must be received by HHSC Rate Analysis no later than the end of the business day on April 1 following the applicable calendar year. Failure to provide HHSC by April 1 [~~June 15~~] with evidence that premium taxes paid have been will result in the discontinuation of the liability insurance rate add-on. If April 1 falls on a weekend, a national holiday, or a state holiday, then the first business day following April 1 of that year is the due date for the evidence of taxes paid. If acceptable evidence that taxes have been paid has not been received by HHSC within 60 days after the April 1 deadline, HHSC will recoup any add-on payments made to the contracted provider for the period in which taxes are unpaid. Once HHSC Rate Analysis receives evidence of taxes paid to the Texas Comptroller, HHSC will restore any add-on payments for that period previously withheld or recouped. Any vendor hold placed under 40 TAC §19.2308 (relating to Change of Ownership) will remain in place until evidence that all taxes on the premiums are paid to and received by the Texas Comptroller for all time periods for which the liability insurance add-on rate was paid to the contracted provider.

(f) Liability insurance payments will not be made to facilities that obtain insurance from an insurer or person engaged in unauthorized insurance as set forth in Chapter 101 of the Texas Insurance Code, Unauthorized Insurance. Providers will be notified by certified mail that the liability insurance payments are being stopped and of the provider's right to appeal the stoppage of payment with HHSC under 1 TAC §§357.481-357.490. It is the responsibility of the nursing facility contracted provider to ensure that liability insurance submitted for

payment is authorized. Liability insurance payments made on insurance that is later determined by the Texas Department of Insurance to be unauthorized insurance under Chapter 101, Texas Insurance Code will be recouped. If the determination by TDI that the insurance is unauthorized is successfully appealed with TDI and the insurance is determined to be authorized, the liability insurance payments that were stopped will be paid to the provider.

(g) To qualify for the purchased liability insurance payment rates each contracted entity must submit the following to HHSC Rate Analysis:

(1) A completed liability insurance coverage certification form provided by HHSC Rate Analysis, signed by an authorized signatory for the contracted provider as per DADS Form 2031.

(2) A copy of evidence of coverage to include a certificate of insurance, the ACORD 25-S or similar document provided by the insurance company or agent that includes the type of coverage, effective and expiration dates of coverage, insurer, policy, and form number of policy contract, agent/producer, and claims made/occurrences. For catastrophic or excess liability coverage, the evidence of coverage must also include the sum that the catastrophic or excess coverage must exceed to become payable. A binder is not acceptable as evidence of insurance.

(3) For independently procured liability insurance, the information identified in subsection (d) of this section.

(4) For insurance purchased through a captive insurance company, the information identified in subsection (e) of this section.

(h) If an insurance policy effective date is not the first day of the month, then the liability insurance payment rates will become effective the first day of the following month. If an insurance policy expiration date is not the last day of the month, then the liability insurance payment rates will be paid for the full month that includes the expiration date.

(i) It is the contracted provider's responsibility to notify HHSC Rate Analysis of any changes to liability insurance coverage including cancellation of coverage, change of insurance and renewal of coverage within 15 calendar days of the effective date of the change. Failure to notify HHSC Rate Analysis of cancellation of coverage or change of insurance could constitute Medicaid fraud. Renewals of coverage not received within 15 calendar days of the effective date of the renewal could result in the liability insurance payment rates being stopped until documentation of the renewal per subsection (f) of this section is received by HHSC Rate Analysis.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 30, 2007.

TRD-200703316
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: September 9, 2007
For further information, please call: (512) 424-6900

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CHAPTER 378. SPECIAL NUTRITION PROGRAMS

SUBCHAPTER A. CHILD AND ADULT CARE FOOD PROGRAM (CACFP)

The Texas Health and Human Services Commission (HHSC) proposes to amend §§378.281, 378.381, 378.447, 378.451, and 378.455, and to repeal §§378.282 - 378.290, to its Special Nutrition Programs (SNP) chapter, Child and Adult Care Food Program (CACFP) subchapter, concerning advance payments, to clarify that the state will no longer issue advance payments to CACFP contractors.

Background and Justification

Pursuant to the National School Lunch Act (42 U.S.C. §1766(f)(4)) and Title 7, Code of Federal Regulations (CFR) §226.10(a), advance payments may be provided to an institution (referred to as "contractor" in Texas) for its program costs prior to the month those costs will be incurred. The law provides that it is the state's option to issue Child and Adult Care Food Program (CACFP) advance payments to all or some of the participating contractors in the state. Currently, HHSC does offer advance payments (other than for the months of September and October). An advance payment is recouped against the reimbursement claim for the month in which the advance payment was issued (or from subsequent reimbursement claims if necessary). Contractors remain responsible for repayment of overissued payments.

If HHSC is unable to collect all or part of overissued payments, HHSC is responsible for reimbursing the United States Department of Agriculture Food and Nutrition Service (FNS) for outstanding advance payments and claims as part of the annual closeout process. In recent years, over half of HHSC's liability for reconciling the statement of account with FNS was due to unrecovered advance payments.

Since it is a state option to issue advance payments, HHSC is recommending repeal and amendment of these CACFP rules to eliminate advance payments for Texas to alleviate the financial liability the state incurs for unrecouped advance payments.

In May 2007, the 80th Texas Legislature passed House Bill 4062 authorizing the transfer of certain child and adult nutrition programs from HHSC to the Texas Department of Agriculture (TDA). There is a concern that the financial liability incurred with advance payments, proportionately, will have even more of an adverse impact on TDA, once administration of these programs is transferred. The transfer is anticipated to be effective in October 2007.

Section-by-Section Summary

As amended, §378.281 states that HHSC does not issue advance payments to any CACFP contractors. Due to the amendment of §378.281; §§378.282 - 378.290 become moot and as such are repealed in their entirety. Sections 378.381, 378.447, 378.451, and 378.455 are amended to remove any reference to advance payments.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposal is in effect there will be a savings to state government but that savings cannot be determined. The proposal will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no significant effect on small businesses or micro businesses to comply with the proposal, except potential cash flow issues. CACFP contractors will continue to receive the same reimbursement for services and continue to be responsible for repaying any overpayments. Only the timing of the payment is changing as a result of the proposal. There are no other anticipated economic costs to persons who are required to comply with the proposal. There is no anticipated negative impact on local employment.

Public Benefit

Joanne Molina, Associate Commissioner for HHSC's Office of Family Services, has determined that for each year of the first five years the proposal is in effect, the public will benefit because HHSC will no longer be issuing CACFP advance payments and as such there will be no general revenue that will be returned to FNS for unrecouped advance payments.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposed rule may be submitted to Rose Duncan, by mail to Texas Health and Human Services Commission, P.O. Box 149030, MC Y906, Austin, Texas 78714-9030, by fax to (512) 371-9315, or by e-mail to rose.duncan@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

DIVISION 12. ADVANCE PAYMENTS

1 TAC §378.281

Statutory Authority

The amendment is proposed under the Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the National School Lunch Act (42 U.S.C. §1766(f)(4)) and Title 7, Code of Federal Regulations (CFR), §226.10(a), which give the state the option as to whether it will issue advance payments in its CACFP.

No other statutes, articles, or codes are affected by this proposal.

§378.281. Does HHSC *[~~DHS~~] issue [~~and monitor~~] advance payments [~~to contractors according to a specific procedure~~]?*

No. According to the National School Lunch Act (42 U.S.C. §1766(f)(4)) and Title 7, Code of Federal Regulations (CFR), §226.10(a) it is a State agency option to issue advance payments to all or some of the participating contractors. HHSC has chosen to issue no advance payments to any CACFP contractors. [~~Yes. DHS issues and monitors advance payments to eligible contractors according to 7 CFR §§226.2, 226.6, 226.7, 226.10, and 226.16.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 30, 2007.

TRD-200703321
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: September 9, 2007
For further information, please call: (512) 424-6900

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1 TAC §§378.282 - 378.290

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

Statutory Authority

The repeals are proposed under the Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the National School Lunch Act (42 U.S.C. §1766(f)(4)) and Title 7, Code of Federal Regulations (CFR), §226.10(a), which give the state the option as to whether it will issue advance payments in its CACFP.

No other statutes, articles, or codes are affected by this proposal.

§378.282. How must a contractor account for advance funds?

§378.283. How does DHS issue advance payments to a contractor that has a claim history?

§378.284. How does DHS issue advance payments to a contractor that does not have a claim history?

§378.285. How does DHS estimate advance payment amounts?

§378.286. Does DHS issue retroactive advances?

§378.287. What happens if USDA does not provide sufficient funds for DHS to pay both advance payments and claims for reimbursement in full?

§378.288. How does DHS recoup advance payments?

§378.289. What happens if the advance payment exceeds the reimbursement earned in the month for which the advance is issued?

§378.290. What happens if a contractor who sponsors day care homes does not comply with program requirements?

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200703322
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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DIVISION 15. OVERPAYMENTS

1 TAC §378.381

Statutory Authority

The amendment is proposed under the Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the National School Lunch Act (42 U.S.C. §1766(f)(4)) and Title 7, Code of Federal Regulations (CFR), §226.10(a), which give the state the option as to whether it will issue advance payments in its CACFP.

No other statutes, articles, or codes are affected by this proposal.

§378.381. How does HHSC [~~DHS~~] manage overpayment of claims for reimbursement, [~~advance payments,~~] start-up, and expansion fund payments?

HHSC [~~DHS~~] manages overpayments according to 7 CFR §§226.6 - 226.8, 226.10, and 226.12 - 226.14; and 40 TAC §69.131 [~~§69.209 of this title (relating to Recoupment of Improper Payments)~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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DIVISION 18. SANCTIONS, PENALTIES, AND FISCAL ACTION

1 TAC §§378.447, 378.451, 378.455

Statutory Authority

The amendments are proposed under the Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the National School Lunch Act (42 U.S.C. §1766(f)(4)) and Title 7, Code of Federal Regulations (CFR), §226.10(a), which give the state the option as to whether it will issue advance payments in its CACFP.

No other statutes, articles, or codes are affected by this proposal.

§378.447. What happens if HHSC [~~DHS~~] determines during the follow-up review that the day care home sponsor has not corrected all program non-compliances [~~noncompliances~~] compliances identified in the initial review?

(a) If HHSC [~~DHS~~] determines during the follow-up review that the day care home sponsor has not corrected all instances of program non-compliance [~~noncompliance~~] identified in the initial review, HHSC [~~DHS~~]:

(1) denies administrative reimbursements beginning the months following the month of the initial review through the month of the follow-up review for any provider who was not monitored or trained according to program requirements;

(2) establishes a cap on the number of day care homes the contractor may sponsor, not to exceed the number of day care homes sponsored at the time of review; and

[~~(3) rescinds or denies approval for advance payments; and~~]

(3) [~~(4)~~] continues the Serious Deficiency Process by notifying the sponsor that if the contractor fails to demonstrate at the second follow-up review that all serious deficiencies HHSC [~~DHS~~] identified have been or will be corrected, HHSC [~~DHS~~] proposes to:

(A) terminate its agreement;

(B) disqualify the organization, responsible principals, and responsible individuals;

(C) release the contractor's eligible providers to transfer to another approved sponsor; and

(D) debar individuals responsible for the deficiencies.

(b) HHSC [~~DHS~~] conducts a second follow-up review no later than 45 days after notifying the contractor of the findings of the initial follow-up review to determine if the sponsor complies with requirements for paying providers according to program requirements.

§378.451. What happens if HHSC [~~DHS~~] determines during the follow-up review that 10% or more of the meals sampled and claimed for reimbursement for the test month fail to meet program requirements?

(a) HHSC [~~DHS~~]:

(1) denies administrative reimbursements for the months following the month of the initial review through the month of the follow-up review for any day care home that does not have eligibility or enrollment forms containing required information;

(2) establishes a cap on the number of day care homes the contractor may sponsor, not to exceed the number of day care homes sponsored at the time of the review; and

[~~(3) rescinds or denies approval for advance payments; and~~]

(3) [~~(4)~~] continues the Serious Deficiency Process by notifying the sponsor that if the contractor fails to demonstrate at the second follow-up review that all serious deficiencies HHSC [~~DHS~~] identified have been or will be corrected, HHSC [~~DHS~~] proposes to:

(A) terminate its agreement;

(B) disqualify the organization, responsible principals, and responsible individuals;

(C) release the contractor's eligible providers to transfer to another approved sponsor; and

(D) debar individuals responsible for the deficiencies.

(b) If the contractor fails to demonstrate at the second follow-up review that all serious deficiencies identified by HHSC [~~DHS~~] have been or will be corrected, HHSC [~~DHS~~] conducts a second follow-up review no later than 45 days after notifying the contractor of the findings of the initial follow-up review to determine if the sponsor complies with requirements ensuring that claims are submitted only for eligible meals served to eligible children.

§378.455. What happens if HHSC [~~DHS~~] determines during the follow-up review that the day care home sponsor has not corrected all instances of program non-compliances [~~noncompliance~~] identified in the initial review?

(a) HHSC [~~DHS~~]:

(1) denies administrative reimbursements for the months following the month of the initial review through the month of the follow-up review for any provider that was not issued program funds according to program requirements;

(2) establishes a cap on the number of day care homes the contractor may sponsor, not to exceed the number of day care homes sponsored at the time of the review; and

~~[(3) rescinds or denies approval for advance payments; and]~~

(3) ~~[(4)]~~ continues in the Serious Deficiency Process by notifying the sponsor that if the contractor fails to demonstrate at the second follow-up review that all serious deficiencies identified by HHSC ~~[DHS]~~ have been or will be corrected, HHSC ~~[DHS]~~ proposes to:

(A) terminate its agreement;

(B) disqualify the organization, responsible principals, and responsible individuals;

(C) release the contractor's eligible providers to transfer to another approved sponsor; and

(D) debar individuals responsible for the deficiencies.

(b) If the contractor fails to demonstrate at the second follow-up review that all serious deficiencies identified by HHSC ~~[DHS]~~ have been or will be corrected, HHSC ~~[DHS]~~ conducts a second follow-up review no later than 45 days after notifying the contractor of the findings of the initial follow-up review to determine if the sponsor complies with requirements for paying providers according to program requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 30, 2007.

TRD-200703324
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 3. TEXAS FEED AND FERTILIZER CONTROL SERVICE/OFFICE OF THE TEXAS STATE CHEMIST

CHAPTER 63. PET FOOD

4 TAC §63.6

The Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist proposes to amend §63.6 concerning Directions for Use. This amendment to the pet food rules is taken to make them more in line with the Association of American Feed Control Officials' (AAFCO) Official Publication.

Dr. Tim Herrman, State Chemist and Director, Office of the Texas State Chemist (OTSC) has determined that adoption of these rules is consistent with the Association of American Feed Control Officials' Model Regulations for Pet and Specialty Pet Food and that there will be no significant cost or additional effort expended by the Office of the Texas State Chemist.

Dr. Herrman has also determined that, because the Texas Pet Food Rules currently address the feeding of a product suitable for intermittent or supplemental feeding only, the public benefit would be that the addition to the rules would address the directions for use of treats, snacks, and complete and balanced pet foods. The cost to small business and/or individuals would be non-consequential since the rule changes brings the Texas Administrative Code in alignment with the national guidelines contained in the Association of American Feed Control Officials' Model Regulations for Pet and Specialty Pet Food Regulations.

Comments on the proposal may be submitted to Dr. Tim Herrman, Office of the Texas State Chemist, P.O. Box 3160, College Station, Texas 77841-3160; by fax to (979) 845-1389; or via e-mail to tjh@otsc.tamu.edu.

The amendment to §63.6 of the pet food rules is proposed under the Texas Agriculture Code 141, §141.004 which provides Texas Feed and Fertilizer Control Service with the authority to promulgate rules relating to the distribution of commercial feeds.

The Texas Agriculture Code, Chapter 141, the Texas Commercial Feed Control Act, §141.051 is affected by the proposed amendment.

§63.6. Directions for Use.

(a) The label of a pet food product which is suitable only for intermittent or supplemental feeding or for some other limited purpose shall:

(1) bear a close and conspicuous disclosure to that effect; or

(2) contain specific feeding directions which clearly state that the product should be used only in conjunction with other foods.

(b) When a dog or cat food is intended for use by, or under the supervision or direction of a veterinarian, the statement: "Use only as directed by your veterinarian" may be used in lieu of feeding directions.

(c) Specialty pet food, including snacks or treats, labeled as complete and balanced for any or all life stages, shall list feeding directions on the product label. These feeding directions shall be adequate to meet the nutrient requirements of the intended species of specialty pet as recommended by the AAFCO-recognized nutritional authority. These directions shall be expressed in common terms and shall appear prominently on the label. The frequency of feeding shall also be specified.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 27, 2007.

TRD-200703293
Dr. Tim Herrman
State Chemist and Director, OTSC
Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist
Earliest possible date of adoption: September 9, 2007
For further information, please call: (979) 845-1121

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 66. REGISTRATION OF PROPERTY TAX CONSULTANTS

16 TAC §66.22, §66.70

The Texas Department of Licensing and Regulation ("Department") proposes a new rule at 16 Texas Administrative Code, §66.22 and amendments to an existing rule at 16 Texas Administrative Code, §66.70, regarding the property tax consultants program.

These rule changes are necessary to implement the provisions of House Bill 2352, passed by the 80th Legislature. The new legislation takes effect September 1, 2007, and allows a registered property tax consultant to be employed by or associated with and acting for an attorney licensed in this state who has successfully completed the senior property tax consultant examination. The legislation allows an attorney who is licensed in this state to take the examination without completing any other eligibility requirements under Chapter 1152, Occupations Code for registration as a senior property tax consultant. The new rule and amendments were recommended for adoption by the Department's Property Tax Consultants Advisory Council at its meeting on July 18, 2007.

New §66.22(a) outlines the procedure for a licensed attorney to take the senior property tax consultant examination. The attorney must file an application on a form provided by the Department and pay the examination fee. Subsection (b) clarifies the eligibility requirements that the attorney is not required to complete. Subsection (c) specifies that the passing score shall be the same as for a senior property tax consultant, which is currently set at 70%.

The amendments to §66.70(e) recognize that the law will now allow property tax consultants the option of being employed by or associated with a Texas-licensed attorney. Conforming changes are made in subsections (f) and (g).

William H. Kuntz, Jr., Executive Director, has determined that for each year of the first five-year period the proposed new rule and amendments are in effect there will be no significant changes to costs or revenues of the state as a result of enforcing or administering the new rule and amendments. The Department anticipates that only a small number of individuals will apply to take the examination under the new rules. There will be no changes to costs or revenues of local government as a result of enforcing or administering the new rule and amendments.

Mr. Kuntz also has determined that for each year of the first five-year period the new rule and amendments are in effect, the public benefit will be increased employment options for registered property tax consultants.

Mr. Kuntz also has determined that for each year of the first five-year period the new rule and amendments are in effect there will be no economic cost to persons required to comply with rules as proposed. There will be no impact on small or micro-businesses.

Comments on the proposal may be submitted to Caroline Jackson, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: erulecomments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The new rule and amendments are proposed under Texas Occupations Code, Chapter 1152 and Chapter 51 which authorize the Department to adopt rules as necessary to implement those chapters and any other law establishing a program regulated by the Department. In particular, the new rule and amendments implement the provisions of House Bill 2352, passed by the 80th Legislature.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 1152 and Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§66.22. Examination--Licensed Attorney.

(a) An attorney who is licensed to practice law in this state may take the senior property tax consultant examination, if the attorney:

(1) files an application on a form provided by the department; and

(2) pays the applicable examination fee.

(b) An attorney who takes the examination under this section is not required to complete any other eligibility requirements for registration as a senior property tax consultant, including:

(1) applying for registration as a senior property tax consultant;

(2) paying the fee for a senior property tax consultant registration; or

(3) meeting the education, experience, and other requirements of Texas Occupations Code, §1152.155 and §1152.157.

(c) The standard for passing the senior property tax consultant examination shall be the same as under §66.20.

§66.70. Responsibilities of Registrant--General.

(a) A registrant may not allow an employee or associate to perform property tax consulting services without first obtaining registration.

(b) A registrant shall list the following information on all written contracts: "Regulated by The Texas Department of Licensing and Regulation, P. O. Box 12157, Austin, Texas 78711, 1-800-803-9202, 512-463-6599; website: www.license.state.tx.us/complaints."

(c) All registrants shall report any change of address to the department within 30 days after the change.

(d) Individuals who are registered under Texas Occupations Code, §1152.158 may not perform property tax consulting services for compensation in connection with a property that is not real property.

(e) A registered property tax consultant must be either:

(1) employed by or have an association with a registered senior property tax consultant and be under the direct supervision of the senior property tax consultant , and there [. ~~There~~] must be a legitimate employee/employer relationship or business association established ; or [.]

(2) employed by or associated with and acting for an attorney who is licensed to practice law in this state and who has successfully completed the senior property tax consultant registration examination under §66.22.

(f) The requirements of subsection (e) of this section do [~~This requirement does~~] not apply to a real estate property tax consultant.

(g) [~~(f)~~] A registered property tax consultant shall notify the department in writing of any change in employment or association within 30 days after the change.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 30, 2007.

TRD-200703318
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: September 9, 2007
For further information, please call: (512) 463-7348

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CHAPTER 74. ELEVATORS, ESCALATORS, AND RELATED EQUIPMENT

16 TAC §§74.10, 74.20, 74.25, 74.26, 74.50, 74.55, 74.60, 74.70, 74.75, 74.80, 74.85, 74.100

The Texas Department of Licensing and Regulation ("Department") proposes amendments to existing rules at 16 Texas Administrative Code, §§74.10, 74.20, 74.25, 74.50, 74.55, 74.60, 74.70, 74.75, 74.80, 74.85, and 74.100 and new rule §74.26 regarding the Elevators, Escalators, and Related Equipment program.

Senate Bill 1729, 80th Legislature amended Health and Safety Code, Chapter 754 to authorize the Commission to adopt recent versions of applicable safety codes, and it authorized the Department to grant variances to the codes for new technological improvements pending their inclusion in the applicable codes. The Department proposes amendments to accommodate those statutory changes, and it proposes changes to clarify the rules. Details are set out below.

Section 74.10 is amended at paragraph (4) and paragraph (7) to drop references to specific versions of the codes and to add a reference to §74.100 where the most recent versions of the codes are adopted. Paragraph (5) is amended to drop the reference to ASME A17.2-2001 and to add language specifying that the currently published edition is the one to use. Paragraph (11) is amended to add a reference to the ASCE Safety Code. New paragraph (14) is added to include a definition of "Inspector". Old paragraph (16) is deleted to remove the definition of unsafe elevator and the paragraph is replaced with new paragraph (1) to define a reportable condition. This change is proposed because some inspectors have been hesitant to label an elevator as unsafe. The purpose of the definition is not to label elevators but to define the types of things that must be reported to the Department. New paragraph (18) is added to define the term "New Technology Variance" as provided in Senate Bill 1729.

Section 74.20 is amended at subsection (d) to change the word "determined" to "required".

Section 74.25 is amended by deleting subsection (d) which will become new §74.26 with one addition. Section 74.25 will now provide contractor registration requirements while §74.26 will provide reporting requirements for contractors.

New §74.26(a)(3) now includes the requirement that quarterly reports only include jobs not previously reported. New subsection (b) requires contractors to report to the building owner and the Department any reportable condition they encounter.

Section 74.50(a)(2) is amended by deleting the phrase, "in a building", to eliminate unneeded language. Subsection (a)(3) is amended to replace the phrase, "have been corrected or are under contract to be corrected" with language requiring the owner to verify that violations cited in an inspection report have been addressed in compliance with §74.70(a)(3). New subsection (f) is added to require that owners notify the Department when needed corrections that were granted a delay by the Department have been made.

Section 74.55 is amended at subsection (a) to require inspectors to provide a copy of the inspection form to the Department and the building owner within ten calendar days of the inspection, and a reference to providing notice when an inspector finds equipment without a decal has been deleted, but is now included in subsection (b). Subsection (b) requires reports of equipment found without a decal to be made within 72 hours of the discovery. Old subsection (b), now subsection (c) is amended to change the reference to "unsafe" to "reportable condition" to comply with the definition change described above, and the report may now be made by e-mail, fax letter or telephone. Old subsection (c) is deleted since the requirement to provide a report to the building owner is now included in subsection (a).

Section 74.60 is amended at subsection (a) to capitalize the word "department" and to add the term "alter" to the list of functions performed under contact. The same amendment has been made to subsections (b), and (c). Subsection (c) is also amended to change the word "the" to "these" that appears before the word "rules". Subsection (d) is amended by deleting the last sentence of the subsection; it is moved to new subsection (g). Subsection (e)(1) is amended by changing the word "the" that appears before "rules" to "these". Subsection (e)(6) is amended by deleting the phrase "or complete an equipment contract" and the word "registrant" is replaced with the term "inspector registrant". Subsection (e)(7) is amended by deleting the word "the" that appears before the word "obtaining", and changing the word "of" to "for" that appears before "the building". New subsection (e)(11) is added to prohibit both the inspector and the person performing the tests observed by the inspector from being employed by the same company. New subsection (f) is added to prohibit an inspector from inspecting equipment if the inspector's employer has a contract to install, maintain, repair, alter, or replace the equipment. New subsection (g) is added to include language deleted from subsection (d).

Section 74.70(a) is amended to more clearly state the responsibilities of a building owner, and to include items deleted elsewhere in the rules. The effect is that their responsibilities are stated in one location rather than being sprinkled throughout the rules. Subsection (b) is amended to more clearly define the inspection interval and to reference the adopted codes as set out in §74.100. Subsection (c) is amended to reference the adopted codes as set out in §74.100. Subsection (d) is amended to replace the word "their" appearing before the word "representative" with the word "his", and to add a provision regarding the circumstances under which equipment suffering an accident may be returned to service. Subsection (e) is amended to reference the adopted codes as set out in §74.100 and to delete language defining who may perform tests since those requirements are set out in the codes. Subsection (f) is amended to change the references to unsafe elevators to elevators having a reportable condition, to change the notification requirement from 48 hours to 24 hours, and to add a requirement that such equipment be reinspected and recertified, and to require the owner to verify that the reportable condition has been corrected before the equip-

ment is returned to service. Subsection (g) is amended to reference the adopted codes as set out in §74.100 and to require that new installations be free of violations of the codes unless the violation is the subject of a Delay, a Waiver, or a New Technology Variance. Subsection (h), which deals with altered equipment has been amended in the same fashion as subsection (g). Subsection (i) has been amended to require that equipment must be tested to determine compliance with adopted codes. Subsection (k)(2) has been amended to make it clear that the section applies to escalators. Subsection (m) has been amended to more clearly set the conditions under which an owner must have equipment reinspected and recertified; there are no substantive changes.

Section 74.75(a)(2) is amended to change the reference from ASME A17.2-2001 to the currently published edition of ASME A17.2. Subsection (a)(7) is deleted as its provisions are now in §74.70. Subsection (b)(4) is amended to make it clear that the official equipment inspection form is not to be used to report inspection results of elevators in single-family dwellings, federal facilities or those that are construction use only. Subsection (c)(1) is amended in its several subsections to clarify and correct the procedure for application of test tags and seals. Subsection (c)(2)(D) is amended to clarify the process for replacement of lost or destroyed decals.

Section 74.80(f) is amended by capitalizing the word "department" where it appears in the section in four places. New subsection (h) is added to provide a fee for an application for a New Technology Variance.

Section 74.85(a) is amended to correct language and to more clearly state the Department's responsibilities. Subsection (a)(2)(A) and (C) are amended to state the Department's duty to review reports and applications that are received rather than having that duty for submitted by a building owner. Subsection (c), which established continuing education requirements for QEI certified inspector, has been deleted since QEI inspectors must have continuing education administered by the QEI certifying entity in order to maintain QEI inspector status. New subsection (c) is added to set out the procedure for Department review of New Technology Variance requests. New subsection (e) is added to provide that the Department may require inspectors to attend training seminars on law and rules. New subsection (f) is added to provide that such seminars where attendance by inspectors is not mandatory may be conducted.

Section 74.100(a) is amended to add "repair, replacement and testing" to the list of operations covered by the adopted codes and to delete the word "new" and the phrase "installed or altered on or after September 1, 2003", and to change the reference to ASME A17.1-2000 to ASME A17.1-2007/CSA B44-07. Old subsection (b) is deleted and a new subsection (b) is added with a list of sections in ASMS A17.1-2007/CSA B44-07 that are not adopted by the Commission. Subsection (c) is added to establish the dates that the adopted codes will become effective in Texas.

These rules are necessary to implement the provisions of Senate Bill 1729 and to generally simplify and clarify the rules.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments and new rule are in effect there will be no cost to state or local government as a result of enforcing or administering the proposed amendments and new rule.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendments and new rule are in effect, the public benefit will be that the rules reflect the provisions of Senate Bill 1729, and that they more clearly communicate requirements to affected and interested persons.

There will be no effect on small or micro-businesses as a result of the proposed amendments and new rule. Other than the filing fee for persons applying for a New Technology Variance, there are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments and the new rule are proposed under Texas Health and Safety Code, Chapter 754 and Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Health and Safety Code, Chapter 754 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§74.10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) The Act--Texas Health and Safety Code, Chapter 754, Elevators, Escalators, and Related Equipment.

(2) Altered Equipment--Any changed equipment, including its parts, components, and/or subsystems, other than maintenance, repair, or replacement. However, the term does include any repairs and replacements performed as part of any alteration(s).

(3) ASME--American Society of Mechanical Engineers, a nationally recognized professional engineering society.

(4) ASME A17.1--The ASME A17.1 [~~A17.1-2000~~] "Safety Code for Elevators and Escalators" as adopted in §74.100 [~~and A17.1a-2002 and A17.1b-2003 Addenda~~].

(5) ASME A17.2--The currently published edition of " [~~A17.2-2001--~~] The Guide for Inspection of Elevators, Escalators, and Moving Walks".

(6) ASME A17.3--The ASME A17.3-2002, "Safety Code for Existing Elevators and Escalators."

(7) ASME A18.1--The ASME 18.1 [~~18.1-1999~~], "Safety Standards for Platforms Lifts and Stairway Chairlifts" as adopted in §74.100 [~~and the A18.1-2001 addenda~~].

(8) Automated People Mover (APM)--a guided transit mode with fully automated operation, featuring vehicles that operate on guideways with exclusive right of way.

(9) Building Owner--The person or persons, company, corporation, authority, commission, board, governmental entity, institution, or any other entity that holds title to the subject building or facility. For purposes under these rules and the Act, an owner may designate an agent.

(10) Contractor--A person, partnership, company, corporation, or other entity engaging in the installation, alteration, repair, or maintenance of equipment. The term does not include an employee of a contractor.

(11) Delay--Postponement of compliance with a requirement of the applicable ASME/ASCE [~~ASME~~] Safety Codes, for a specific period of time.

(12) Existing Equipment--equipment installed or altered before September 1, 1993.

(13) Inspection report--A Department approved form used by the inspector to report the inspection results of one unit of equipment.

(14) Inspector--A person engaged in the inspection of equipment for the purpose of determining compliance with these rules and adopted standards.

(15) [~~(14)~~] New Equipment--equipment installed or altered on or after September 1, 1993.

(16) [~~(15)~~] Publicly visible area of building--a location that is visible to the public in an elevator car or a common area lobby or hallway and accessible to the public at all times when any elevator is in operation, without the need for the viewer to obtain assistance or permission from building personnel.

(17) Reportable Condition--a condition which exists where a defect requires the equipment to be removed from operation to present a risk of serious injury to passengers, operators, or the general public.

(18) Variance, New Technology--Deferral of compliance with a requirement of the applicable ASME/ASCE Safety Codes to allow the installation of new technology if the new component, system, sub-system, function or device is found to be equivalent or superior to the standards adopted in §74.100, pending adoption of standards that approve the new technology.

~~[(16) Unsafe elevator or escalator--A condition which exists due to a defect which presents a risk of serious bodily injury.]~~

(19) [~~(17)~~] Waiver--Deferral of compliance with a requirement of the applicable ASME Safety Codes for an indefinite period of time.

§74.20. Inspector Registration Requirements.

(a) - (c) (No change.)

(d) Inspectors shall attend a law and rules update seminar conducted by the Department as part of their requirements to renew their registration, when required [~~determined~~] by the Executive Director.

(e) (No change.)

§74.25. Contractor Registration Requirements.

(a) A person registering with the Department as a contractor shall submit a completed application for registration on the forms provided by the Department. A complete application shall include the original application fee referenced in §74.80.

(b) Registration renewal applications must be filed by the expiration date. Contractors shall submit a completed registration renewal application on forms provided by the Department. A completed contractor registration renewal application shall include the renewal application fee referenced in §74.80.

(c) The contractor shall notify the Department in writing within 30 days of any changes to information submitted on the application or renewal forms.

~~[(d) Contractors must submit to the Department reports regarding installation, repair, alteration or maintenance jobs on a format approved by the Department.]~~

~~[(1) An initial report is due no later than 60 days of the application date and must include all jobs performed by the contractor during the two years prior to the application date.]~~

~~[(2) Quarterly reports are due each calendar year in accordance with the following schedule.]~~

~~[(A) 1st quarter--April 30]~~

~~[(B) 2nd quarter--July 31]~~

~~[(C) 3rd quarter--October 31]~~

~~[(D) 4th quarter--January 31 of the next year.]~~

~~[(3) Quarterly reports must include all jobs performed in the quarter which have not been previously reported to the Department.]~~

~~[(4) The initial quarterly report must include all jobs performed from the application date until the end of the quarter containing the application date, which have not been previously reported to the Department.]~~

§74.26. Reporting Requirements--Contractor.

(a) Contractors must submit to the Department reports regarding installation, repair, alteration, or maintenance jobs on a format approved by the Department.

(1) An initial report is due no later than 60 days of the application date and must include all jobs performed by the contractor during the two years prior to the application date.

(2) Quarterly reports are due each calendar year in accordance with the following schedule.

(A) 1st quarter--April 30

(B) 2nd quarter--July 31

(C) 3rd quarter--October 31

(D) 4th quarter--January 31 of the next year.

(3) Quarterly reports must only include all jobs performed in the quarter which have not been previously reported to the Department.

(b) Contractors shall, by e-mail, fax, letter or telephone, report to the Building Owner and Department, within 24 hours of discovery, all equipment they encounter that has a reportable condition.

§74.50. Reporting Requirements--Building Owner.

(a) To obtain a Certificate of Compliance, the building owner must submit to the Department within 60 days of the equipment inspection date, the following items:

(1) the application for Certificate of Compliance;

(2) a copy of the inspection reports for each unit of equipment [~~in a building~~];

(3) written documentation to verify that all violations of the applicable ASME code, cited on the inspection report, are in compliance with §74.70(a)(3) [~~have been corrected or are under contract to be corrected~~];

(4) any application(s) for Delay or Waiver if applicable; and,

(5) all applicable fees.

(b) All Delay [~~delay~~] applications, received after September 1, 2003 to install door restrictor and fire service by September 1, 2010, must include the following on the delay application form or attach a statement to the delay application form:

(1) verification that the building owner has notified all tenants or occupants in the building that the elevators do not comply with the door restrictor or fire service requirements in the ASME A17.3-2002 Code and has made available to tenants or occupants upon request the building owner plan of compliance before 2010;

(2) the building owner plan of compliance before 2010; and

(3) compliance completion date.

(c) The owner shall notify the Department, in writing and within 30 days, of equipment that has been placed out of service. The equipment must be placed out of service in accordance with the definition in A17.1, *"installation placed out of service."*

(d) The owner shall notify the Department, in writing and within 30 days, of an elevator that has had alterations converting the equipment to a material lift. The conversion shall comply with the applicable sections of A17.1 [~~Part 7~~].

(e) The owner shall notify the Department, in writing and within 30 days, of a material lift that has had alterations converting the equipment to an elevator. The elevator must be inspected and brought into compliance with A17.1 as a new installation.

(f) When a Delay has been approved, the owner shall notify the Department, in writing within 30 days of the date of correction.

§74.55. Reporting Requirements--Inspector

(a) For new installations or alterations [~~and for equipment inspected and found without a decal,~~] the inspector shall provide a copy of the Elevator Equipment Inspection Form to the Department and the building owner not later than the 10th [~~within ten~~] calendar day [~~days~~] after completing the inspection.

(b) Inspectors, by e-mail, fax, letter or telephone, shall report to the Department, within 72 hours of discovery, all equipment they encounter that does not have a decal number.

(c) [~~(b)~~] The inspector shall clearly note on the inspection report any equipment found with a reportable condition [~~to be unsafe~~], and shall report it immediately by submitting a copy of the report to the building owner and by e-mail, fax, letter or telephone to the Department within 24 hours.

~~[(c) Inspectors shall submit a copy of the inspection report to the building owner not later than the 10th calendar day after the date of inspection.]~~

§74.60. Standards of Conduct for Inspector or Contractor Registrants.

(a) *Competency.* The registrant shall be knowledgeable of and adhere to the Act, these [~~the~~] rules, the ASME and ASCE Code, and all procedures established by the Department [~~department~~] for equipment inspections or performance of a contract to install, alter, repair, or maintain equipment. It is the obligation of the registrant to exercise reasonable judgment and skill in the performance of equipment inspections or performance of a contract to install, repair, or maintain equipment.

(b) *Integrity.* A registrant shall be honest and trustworthy in the performance of equipment inspections or performance of a contract to install, alter, repair, or maintain equipment, and shall avoid misrepresentation and deceit in any fashion, whether by acts of commission or omission. Acts or practices that constitute threats, coercion, or extortion are prohibited. The registrant shall accurately and truthfully represent to any prospective client his/her capabilities and qualifications to perform the services to be rendered.

(c) *Interest.* The primary interest of the registrant is to ensure compliance with the Act, these [~~the~~] rules, and the ASME or ASCE Code and all procedures established by the Department. The registrant's position, in this respect, should be clear to all parties concerned while conducting equipment inspections or completing the performance of a contract to install, alter, repair, or maintain equipment.

(d) *Conflict of Interest.* A registrant is obliged to avoid conflicts of interest and the appearance of conflicts of interest. A conflict of interest exists when an inspector performs or agrees to perform equipment inspections for a building in which he has a financial interest, whether direct or indirect. A conflict of interest also exists when a registrant's professional judgment and independence are affected by his/her family, business, property, or other personal interests or relationships. [~~A registered inspector shall withdraw from employment when it becomes apparent that it is not possible to faithfully discharge the duty and performance of services owed the client, but then only upon reasonable notice to the client.~~]

(e) *Specific Rules of Conduct.* A registrant shall not:

(1) participate, whether individually or in concert with others, in any plan, scheme, or arrangement attempting or having as its purpose the evasion of any provision of the Act, these [~~the~~] rules, or the Standards adopted by the Commission;

(2) knowingly furnish inaccurate, deceitful, or misleading information to the department, a building owner, or other person involved in equipment inspections or equipment contracts;

(3) state or imply to a building owner that the department will grant a delay or waiver;

(4) engage in any activity that constitutes dishonesty, misrepresentation, or fraud while performing equipment inspections or completing an equipment contract;

(5) perform equipment inspections or complete an equipment contract in a negligent or incompetent manner;

(6) perform equipment inspections [~~or complete an equipment contract~~] in a building or facility in which the inspector registrant is an owner, either in whole or in part;

(7) perform equipment inspections in a building or facility wherein the registrant, for compensation, participated in [~~the~~] obtaining an equipment contract for [~~of~~] the building;

(8) indulge in advertising that is false, misleading, or deceptive;

(9) misrepresent the amount or extent or prior education or experience to any client; [~~or~~]

(10) hold out as being engaged in partnership or association with any person unless a partnership or association exists in fact; or [~~.~~]

(11) perform inspections on any equipment in which both the inspector registrant and the person performing the test or installing the equipment are employed by the same company.

(f) An inspector registrant may not perform inspections upon equipment for which the inspectors' employer also has a contract to perform installations, maintenance, repairs, tests, replacements or alterations on that equipment.

(g) An inspector registrant shall withdraw from employment when it becomes apparent that it is not possible to faithfully discharge the duty and performance of services owed the client, but then only upon reasonable notice to the client.

§74.70. Responsibilities of the Building Owner.

(a) The building owner shall:

(1) obtain the services of an inspector registered with the Department [department] to perform inspections in accordance with §74.75 and §74.100; [.]

(2) keep the equipment free from reportable conditions;

(3) have all violations cited on an inspection report;

(A) corrected within 60 calendar days of the date of inspection;

(B) have them under contract to be corrected and all work completed not later than the next inspection due date; or

(C) have an approved waiver or delay.

(b) The owner of the building in which equipment is located shall have such equipment inspected at an interval not to exceed every twelve (12) months to determine compliance with the applicable standards adopted in §74.100.

(c) The owner of the building in which the equipment is located must have available all maintenance and inspection records and maintenance control programs for the equipment during the life of the equipment as required by the applicable standards adopted in §74.100 [A17.1 Section 8.6]. These records and programs shall be available in the building.

(d) The building owner or his [their] representative must report all accidents, as defined in Texas Health and Safety Code, §754.011, involving equipment to the Department, using a Department approved form, within 72 hours of the accident. If the accident results in serious bodily injury or a fatality, the equipment shall be removed from service and shall not be moved (except as necessary to extricate an injured party or effect a life-saving rescue) or returned to service until a representative of the Department completes an investigation and issues an approval to return the unit to service.

(e) The building owner shall ensure that all of the tests required by the applicable standards adopted in §74.100 [ASME A17.1, Part 8,] are performed [made by a person qualified to perform such services and registered with the department. Such tests must be performed in the presence of the inspector. The person performing the test must be familiar with the operation of the equipment and available to accompany and assist during an inspection].

(f) If any equipment is determined to have a reportable condition [be unsafe,] by inspection or other means, the building owner shall notify the Department in writing within 24 [48] hours, and shall place the unsafe equipment out of operation until repairs to correct the reportable [unsafe] condition(s) are completed. After repairs have been completed, the building owner shall have the equipment re-inspected and re-certified and submit written verification to the Department that the reportable [unsafe] condition has been corrected before returning the equipment to service.

(g) New equipment installations must be inspected and tested to determine their safety and compliance with the requirements as adopted in §74.100 [of ASME A17.1,] before being placed in service. The equipment shall be free of any violations, unless a Waiver, Delay or New Technology Variance has been granted by the Department in writing, before being placed in service.

(h) Altered equipment must be inspected and tested to determine its safety and compliance with the requirements as adopted in §74.100 [of ASME A17.1, and ASME A17.3] before being placed back in service. The equipment shall be free of any violations, unless a Waiver, Delay or New Technology Variance has been granted by the Department in writing, before being placed back into service.

(i) Equipment [Existing equipment] must be [inspected and] tested [annually] to determine its safety and compliance with the requirements as adopted in §74.100 [of ASME A17.3].

(j) The owner of the building in which equipment is located must obtain a yearly certificate of compliance from the Department evidencing that each unit of equipment in the building is in compliance with the Act and all applicable rules and standards. The owner of the building must have a current Certificate of Compliance in order to operate equipment located in the building.

(k) The building owner must display the current Certificate of Compliance:

(1) if the certificate relates to an elevator,

(A) inside the elevator car not more than 7'0" or less than 3'0" above the finished car floor;

(B) outside the elevator car in the main elevator lobby within 10 feet of the elevator call button; or

(C) in a common area lobby or hallway location that is:

(i) accessible to the public without assistance or permission during all hours in which any elevator is in operation and

(ii) identified by a plaque mounted in the elevator car or within 10 feet of the elevator call button in the main elevator lobby. The font size for letters on the plaque shall be at least 18 and the plaque must state that the elevator is regulated by the Texas Department of Licensing and Regulation and include the department's telephone number 1-800-803-9202 and the building management's telephone number.

(2) if the certificate relates to an escalator, in a common area lobby or hallway location that is:

(A) accessible to the public without assistance or permission during all hours in which any escalator is in operation and

(B) identified by a plaque mounted within 10 feet of entry and exit of escalator in the main escalator lobby. The font size for letters on the plaque shall be at least 18 and the plaque must state that the escalator is regulated by the Texas Department of Licensing and Regulation and include the department's telephone number 1-800-803-9202 and the building management's telephone number.

(3) on the box containing the control circuitry if the certificate relates to a chairlift, platform lift, automated people mover operated by cables, moving sidewalk, or related equipment.

(l) The building owner must display an inspection report at the location defined in subsection (k), selected by the owner, until a current certificate of compliance is issued by the Executive Director.

(m) The building owner must have equipment re-inspected and re-certified if the equipment:

(1) [if the equipment] has been altered [and determined to be unsafe];

(2) has been determined to have a reportable condition [be unsafe];

(3) has had any [cosmetic] alteration made to the interior of elevator car enclosures or flooring [that diminishes the level of safety or poses a risk of serious injury]; or

(4) [if an] inspection report shows an existing violation has continued longer than permitted in a delay granted by the executive director.

(n) The building owner shall have copies of all current department issued Waivers, Delays, and Variances [~~waivers and delays,~~] posted in the machine room/machinery space in a readily accessible and visible location available to elevator personnel.

§74.75. Responsibilities of the Inspector.

(a) Inspection procedures.

(1) The inspector must inspect all equipment for compliance with the applicable standards as adopted in §74.100.

(2) Inspectors must use the currently published edition of ASME A17.2 [~~A17.2-2001~~], "Inspectors' Manuals" to conduct inspections and witness tests for compliance with the standards adopted by the Department.

(3) The inspector shall report to the building owner [~~or agent~~] before beginning any inspections.

(4) The inspector[~~,~~] and the building owner must sign and date the inspection report.

(5) The inspector shall not perform any of the safety tests.

(6) On new or altered equipment installations, the inspector may perform an inspection prior to the installation being completed. However, on these installations the Department will only accept inspection reports for final inspections performed by the inspector after the installation is completed.

~~[(7) New or altered equipment installations shall not be permitted to be used by the public until the equipment is completely installed and all work is completed.]~~

(b) Department forms.

(1) The inspector must use current Department approved forms for reporting inspections.

(2) The Department forms shall be filled out completely, and shall be used to report the [~~all~~] inspections of existing equipment and final inspections of new or altered equipment.

(3) The inspector must list all ASME Code violations by code rule number and code edition for each unit inspected, and include a written description of the violation on the Department Form. If the ASME Code refers to another code, the inspector must list both code rule numbers and include a written description of the violation.

(4) The inspector may not use the official elevator equipment inspection form [~~must provide his/her own inspection report form~~] to report the results of an inspection to the owner of equipment located in a single-family dwelling, construction-use only elevator, or Federal Facility.

(c) Inspector's Equipment.

(1) Test Tags

(A) The inspector must purchase test tags from the Department and shall be the person who attaches these tags to the inspected [~~inspection~~] equipment.

(B) The inspector shall inscribe all required information on each Department test tag. Department test tags shall not be replaced until after all date and signature spaces on the tag are filled.

(C) Upon completion of the initial Acceptance test, Department test tags shall be attached to each individual piece of [~~the~~] equipment on or adjacent to the equipment controller or main line disconnect so that it is in a conspicuous location [~~with wire rope and lead seal~~].

(D) All devices and adjustments required to be sealed by the adopted standard shall be sealed with wire rope and lead seal by the inspector witnessing the tests(s). Once a device or adjustment has been so sealed, there shall be no need to replace the seal unless it is broken for whatever reason, whereupon an inspector shall witness the test and provide a seal as prescribed herein prior to the unit being returned to service. The lead seal shall be crimped onto the wire rope using a crimping tool bearing the Department's seal and the crimping tool number assigned to the inspector. An inspector may use the required crimping tool to seal lead seals provided by the manufacturer at the factory as long as the assigned number is legible.

(E) Inspector's equipment may be purchased from the Department for:

(i) $200 per 100 test tags (sold in multiples of 100); and

(ii) $10 per 100 wire ropes and lead seals (sold in multiples of 100).

(F) The inspector shall verify that contractor's test tags are placed on the equipment in conformance with the adopted standards in §74.100. [~~Test tags shall be attached to equipment as described below:~~]

~~*[(i)* Electric Elevators, Acceptance Tests, Category 1 (annual tests) and Category 5 (Five Year Tests). Tags shall be placed in the machine room/machinery space. Tags shall not be replaced until after all date and signature spaces on the tag are filled.]~~

~~*[(ii)* Hydraulic Elevators, Acceptance Tests, Category 1 (annual test), Category 3 (three year tests), and Category 5 (Five Year Tests). Tags shall be placed in the machine room/machinery space. Tags shall not be replaced until after all date and signature spaces on the tag are filled.]~~

~~*[(iii)* Escalators, Acceptance Tests. Attach tags to the overspeed governor and/or emergency brake. Tags shall not be replaced until after all date and signature spaces on the tag are filled.]~~

(2) Decals

(A) Each unit of equipment shall be identified with a unique identification number decal issued by the Department, which the inspector must affix to the upper right hand corner of the control panel. The decal shall remain on the control panel for the life of the equipment.

(B) An additional Department decal shall not be affixed to equipment that has a current Department decal displayed.

(C) All correspondence and inspection reports shall reference the decal number and Department building ID number, as reflected on the Certificate of Compliance.

(D) If an inspector places a new decal on a unit of equipment to replace a lost or destroyed decal, the inspector must report the equipment's location, old decal number, and new decal number to the Department within ten calendar days of placing the new decal number upon the equipment.

§74.80. Fees.

(a) Inspector registration fees.

(1) original--$100

(2) renewal application--$100

(3) Revised/Duplicate registration card--$25

(b) Certificate of Compliance filing fees:

(1) submitted by building owner with a copy of inspection report within 60 days of the equipment inspection date--$30 per unit of equipment;

(2) $10 late filing fee per each unit for every thirty (30) day period if the inspection report, filing fees, and verification about correcting deficiencies in the inspection report are filed after the 90th day from the equipment inspection date, and

(3) $25 per Revised/Duplicate Certificate.

(c) Waiver/Delay [~~Waiver/delay~~] application fee: $50 for each ASME Code violation[~~,~~] per unit of equipment[~~,~~] requested to be waived or delayed.

(d) Fees shall be charged and collected by the Department for a waiver or delay application for an institution of higher education.

(e) Contractor Registration fees

(1) original--$300

(2) renewal application--$300

(3) Revised/Duplicate registration card--$25

(f) The fee for Department [~~department~~] personnel to disconnect power or lockout equipment in a building shall be $200 per hour. Travel and per diem costs shall be reimbursed by the building owner in accordance with the current rate as established in the current Appropriations Act. The Department [~~department~~] shall present a billing statement to the building owner or representative after disconnecting the power or lockout that is payable upon receipt unless the Department receives in writing verification that the expenses would be paid no later that the 10th day after the date power is reconnected or equipment is unlocked. The fee for Department [~~department~~] personnel to reconnect power or unlock equipment is the same to disconnect or lockout equipment.

(g) Late renewal fees for Inspector and Contractor registrations issued under this Chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(h) New Technology Variance application fee of $2,500 for each individual deviation from the standards adopted in §74.100.

§74.85. Responsibilities of the Department.

(a) When issuing [~~Issue~~] Certificates of Compliance the Department shall: [~~:~~]

(1) Assure that each [~~Each~~] certificate includes [~~must include~~] the decal number, inspection date, building name and physical address, owner name and mailing address, inspector name and QEI #, current inspection date, the date of the last inspection, the due date of the next inspection, contact information at the department to report a violation, indicate status of correcting code violations and the Executive Director's signature and date.

(2) Use [~~The Department shall use~~] the following procedures to issue a Certificate of Compliance:

(A) review inspection report and fees received by the Department [~~submitted by building owner~~]

(B) review verification submitted by building owner indicating which code violations have been remedied and which code violations are under contract to be corrected;

(C) review Waiver/Delay [~~delay/waiver~~] application and fees received by the Department [~~submitted by building owner~~];

(D) notify building owner with a Notice of Incomplete Submittal asking for any missing inspection documents and fees; and

(E) notify building owner of any denied waiver or delay requests and ask for verification that violations have been remedied or under contract to be corrected.

(F) After a determination is made that the building owner submitted an inspection report with the correct amount of filing fees and all deficiencies in the inspection report have been corrected, or under contract to be corrected, or delay or waiver granted, then a certificate of compliance is issued for each unit of equipment.

(b) The Department shall provide notification to building owners, architects, and other building industry professionals regarding the necessity of annually inspecting equipment through the Department's website, press releases, and group presentations.

(c) Prior to the installation of any device, equipment or technology not permitted by the currently adopted standards, a request for New Technology Variance must be granted by the Department.

(1) Requests for New Technology Variances shall contain the following, if applicable:

(A) an enumeration and description of all the requirements of the adopted standard for which a new technology variance is being requested;

(B) documentary evidence to support a claim of equivalence or superiority to the requirements of the adopted standard;

(C) documentary evidence that the new technology is being or may be considered by the ASME code committee(s) for inclusion in a future standard;

(D) an estimated time frame for the approval of the new technology by the ASME code committee(s);

(E) any additional supporting evidence deemed by the applicant to be necessary to assist in making a determination; and

(F) the new technology variance application fees outlined in §74.80(h).

(2) The applicant shall be advised of the status of the application, in writing, not less often than quarterly.

(3) The applicant for a New Technology Variance shall be notified of the Department's decision in writing. If approved, the notification will itemize the specific code requirement deviations for which the variance(s) are approved.

[~~(c) The Department shall approve continuing education programs for registered QEI-1 certified Inspectors.~~]

[~~(1) Applicant must submit application form, copy of the course outline, resume of instructor who will teach, payment of all applicable fees, and any other information or data that is necessary to adequately describe or explain the course.~~]

[~~(2) The Department will issue a letter of approval or disapproval for the continuing education program.~~]

[~~(3) The Department will compile a list of approved continuing education programs for inspectors.~~]

(d) The Department may periodically review inspection reports to determine compliance with the applicable statutes and administrative rules.

(e) The Department may require inspector attendance at periodic rules and/or law update seminars conducted by the Department when the Executive Director determines such seminars to be necessary.

(f) The Department may conduct code, rule and law or other inspector training seminars where attendance by inspectors is not mandatory.

§74.100. Technical Requirements.

(a) The Department adopts the standards for the installation, maintenance, repair, replacement, alteration, testing, operation, and inspection of [~~new~~] equipment [~~installed or altered on or after September 1, 2003,~~] that are contained in the following codes: ASME A17.1-2007/CSA B44-07 as amended below [~~A17.1-2000~~], ASME A17.3-2002, ASME A18.1-2005 [~~A18.1~~] and ASCE Codes 21.

(b) The following amendments shall be made to ASME A17.1-2007/CSA B44-07:

(1) Delete requirement 1.2.1(c) and all references to A17.7 within the adopted standard, preface and appendices.

(2) Delete requirement 8.10.2.2.1(q) emergency or standby power operation.

(3) Delete requirement 8.10.2.3.2(l) emergency or standby power alterations.

(4) Delete requirement 8.10.3.3.2(l) emergency or standby power alterations.

(5) Delete 8.11.2.2.7 standby or emergency power operation.

(6) Delete requirement 8.11.2.3.5 emergency and standby power operation.

(7) Delete requirement 8.11.3.2.3(f) standby power operation.

(8) Delete the reference to ASME A17.3 contained within Section 9.1.

(9) Delete Appendix E in its entirety.

(c) The effective dates of:

(1) ASME A17.1-2007/CSA B44-07 and the amendments in §74.100(b) shall be effective on April 1, 2008.

(2) ASME A18.1-2005 shall be effective April 1, 2008.

(3) ASME A17.3-2002 continues to be in effect.

~~[(b) The Department adopts the standards for the installation, maintenance, alteration, operation, and inspection of existing equipment installed or altered before September 1, 2003, that are contained in the following codes: ASME A17.1, ASME 18.1 and ASCE Codes 21 in effect on the date of installation or alteration and ASME A17.3-2002.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 30, 2007.

TRD-200703319
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: September 9, 2007
For further information, please call: (512) 463-7348

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CHAPTER 83. COSMETOLOGISTS

16 TAC §§83.10, 83.20, 83.22, 83.23, 83.25, 83.26, 83.29, 83.31, 83.40, 83.50 - 83.54, 83.71, 83.80, 83.106, 83.110, 83.114, 83.120

The Texas Department of Licensing and Regulation ("Department") proposes amendments to existing rules at 16 Texas Administrative Code, §§83.10, 83.20, 83.22, 83.23, 83.25, 83.26, 83.29, 83.31, 83.40, 83.50, 83.51, 83.52, 83.53, 83.54, 83.71, 83.80, 83.106, 83.110, 83.114, and 83.120, regarding the regulation of cosmetologists.

These proposed rule changes are necessary to implement changes in law enacted by House Bill 2106, 80th Legislature, and to make certain clean-up changes in the rules for cosmetologists. The provisions of House Bill 2106 became effective on June 15, 2007 and require the Commission of Licensing and Regulation to adopt rules necessary to implement the new legislation by January 1, 2008. These proposed rule changes, with the exception of a clean-up change in §83.114, were recommended by the Advisory Board on Cosmetology at its meeting on July 9, 2007.

In §83.10 the definition of "hair weaver" is amended to recognize that shampooing clients' hair is a customary part of hair weaving services and, in fact, is a significant part of the curriculum for hair weaver training.

Section 83.20 is reorganized to implement a change in law made by House Bill 2106, that applicants for a specialty certificate are no longer required to have a high school diploma or equivalent.

Section 83.22 is amended to implement a change in law made by House Bill 2106, that new beauty shops and specialty shops are no longer required to be inspected by the Department before opening for business.

Section 83.23 is amended to implement a change in law made by House Bill 2106, that applicants for a beauty culture school license are no longer required to submit a floor plan. A corresponding change is made to the requirements for public school cosmetology programs.

In §83.25 a clean-up change is made to Subsection (c) to recognize that a hair braiding specialty certificate is distinct from a hair weaving specialty certificate. Subsection (f) is amended to remove the reference to a time frame that will no longer apply once the proposed rules are adopted and take effect. Subsection (k) is added to implement a provision of House Bill 2106 that restricts the number of continuing education hours required of cosmetologists who are at least 65 years of age and have held a license for at least 15 years. The law now limits the number of hours that the Department may require of these licensees to not more than four hours in health and safety courses. Upon the recommendation of the Advisory Board on Cosmetology, the proposed rule requires these licensees to complete two hours in a Sanitation course.

In §83.26 a technical correction is made to recognize that a hair braiding specialty certificate is distinct from a hair weaving specialty certificate.

Section 83.29(b) is amended to implement a change in law made by House Bill 2106 by specifying that relocated beauty shops and specialty shops are no longer required to be inspected by the Department before opening for business. Relocated beauty culture schools must still be inspected prior to opening. Similarly, Subsection (c) is amended to clarify that beauty shops and specialty shops are not required to be inspected on a change of

ownership; only beauty culture schools require such inspection. Additionally, in Subsection (c) a clean-up change is made to clarify that the list of events that constitute a change of ownership is not an exhaustive list.

In §83.31 a clean-up change is made to list the hair braiding specialty certificate separately from the hair weaving specialty certificate.

In the General Appropriations Act, the 80th Legislature appropriated money to the Department from Private Beauty Culture School Tuition Protection Account for the 2008-09 biennium. In response, the Department proposes to update the rules related to claims against the account. Section 83.40(a) is amended to recognize that under Chapter 1602, Occupations Code there are two purposes of the account: to refund tuition and fees to students who are owed a refund by a closed school and to pay expenses incurred by a private beauty culture school in providing training directly related to educating a student from a closed school. In Subsection (f) the substitution of the word "may" for "will" acknowledges that a claim may be paid only if all conditions of the rules are met, including that the account contains sufficient funds. A limit of $100,000 is placed on the total of claims that may be paid against one school. This limit is intended to avoid having the entire account being exhausted by claims against one closed school. Subsection (g) is added to list the requisites for payment of a refund to a student. Subsection (h) lists the requisites for payment of expenses to a private beauty culture school related to educating a student from a closed school. Subsection (i) specifies that claims will be paid on a pro rata basis if all claims cannot be satisfied. Subsection (j) requires that the Department provide notice of a claim to the affected school and gives the school 20 days from the date of the notice to dispute the claim. Subsection (k) identifies the consequences of a payment from the account, including that the closed school must repay the account and that the school is subject to administrative sanctions and penalties.

Sections 83.50 and 83.51 are amended to recognize that initial inspections are now required only of beauty culture schools and not shops.

Section 83.52(a) is amended to implement a change in law made by House Bill 2106 to increase the frequency of periodic inspections of beauty culture schools to twice per year. A clean-up change is made to Subsection (d) to remove a reference to "certain" violations because the rules do not specify certain violations that may result in administrative penalties or sanctions. The Department's Penalty Matrix, which is part of the Enforcement Plan, identifies the range of sanctions and penalties for various violations.

The effect of the wording changes in §83.53 is to remove beauty culture schools from Tiers 1 and 2 of the risk-based inspection schedule. This is necessary in light of the increased frequency of periodic inspections for schools. Additional relevant factors are added that would place a beauty culture school in Tier 3. Conforming changes are made to Subsections (f) and (g). As in §83.52(d) the word "certain" is removed in Subsection (e) in reference to administrative penalties and sanctions for violations.

Section 83.54(a) is amended to add a deadline by which an establishment owner shall complete all corrective modifications and provide written verification of the corrective modifications to the department. The deadline is 10 days after receiving the Department's list of required corrective modifications. As in previous sections, the word "certain" is removed with respect to violations that may lead to administrative penalties and sanctions. Subsection (b) is amended to add that failure to complete corrective modifications timely or to provide written verification to the department timely may result in administrative penalties or sanctions.

Section 83.71(f) is amended to make a clean-up change to separate the requirements for hair weaving specialty shops and hair braiding specialty shops. Hair braiding specialty shops are not required to provide shampoo bowls or dryers because hair braiding practice does not include shampooing.

Section 83.80 is amended to make clean-up changes to separate the fees for hair weaving specialty shops and hair braiding specialty shops.

Section 83.106 is amended to implement a change in law enacted by House Bill 2106. Under Texas Occupations Code, Section 1603.352, as amended by House Bill 2106, the requirement to sterilize of instruments used in nail services applies to metal instruments.

A clean-up change is made to §83.110 to clarify that hair braiders, in addition to the other license types mentioned, must wash their hands before performing services on a client.

Section 83.114(f) is amended to make a clean-up change to clarify that preparation of food or beverages on licensed premises for sale is prohibited, but preparation of food or beverages not for sale is permitted. For example, a cosmetology establishment may offer a cup of coffee to a customer without charge. The language of the current rule, strictly interpreted, could be read to prohibit a cosmetology establishment from preparing a cup of coffee for a customer. This is not the intent of the rule and was never the Department's interpretation. The intent of the rule is to prohibit, due to health concerns, the operation of a food or drink establishment on the same premises as a cosmetology establishment. The Department's enforcement of the rule has been consistent with that interpretation. However, the Department proposes this change to avoid any confusion as to what is permitted.

Section 83.120(d) is amended to require that the beauty culture school, rather than the student, is responsible for keeping a record of the practical applications completed by each student. Because the school reports this information to the Department, the Department believes that it is more appropriate for the school to be responsible for tracking the information.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no significant changes to costs or revenues of the state and no changes to costs or revenues of local government as a result of enforcing or administering the amendments. Although the underlying changes in law, such as eliminating initial inspections of cosmetology shops or increasing inspection frequency of beauty culture schools, may have some fiscal implications, the changes made by these proposed rules do not in themselves have any significant fiscal implications.

Mr. Kuntz also has determined that for each year of the first five-year period the amendments are in effect, the public benefit will be as follows: more clear and detailed procedures for payment of tuition refund claims to cosmetology students when a school closes; a fixed time frame for establishment owners to make corrective modifications following an inspection; a more specific requirement that hair braiders must wash their hands before working on a client; and clarification that establishments

may offer food and beverages, such as coffee, without charge to customers. Licensees who are at least 65 years of age and have at least 15 years of licensure will benefit by needing only two hours of Sanitation continuing education to renew the license.

Mr. Kuntz also has determined that there may be some increased costs to closed beauty culture schools by requiring that the schools must repay claims that are paid from the Private Beauty Culture School Tuition Protection Account. Schools affected may include small or micro-businesses. The maximum amount of each claim is $35,000, and the maximum amount of all claims for one school is $100,000. Repayments to the account include interest of 8% per year. Additionally, establishments, including small or micro-businesses, generally will have a ten-day deadline to make corrective modifications following a Department inspection. The cost of making these modifications within the specified time frame will vary depending on the nature of the violation. There are no other anticipated costs to persons required to comply with the rules. There are no other anticipated costs to small or micro-businesses.

Comments on the proposal may be submitted to Caroline Jackson, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, Chapters 51, 1602, and 1603, which authorize the Department to adopt rules as necessary to implement those chapters and any other law establishing a program regulated by the Department. In particular, many of these rule changes are proposed to implement the provisions of House Bill 2106, 80th Legislature.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 1602, and 1603. No other statutes, articles, or codes are affected by the proposal.

§83.10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (9) (No change.)

(10) Hair weaver--person authorized by the department to perform the services of a hair braider as defined in this section and, additionally, may attach hair by any weaving method. Such practice may [~~shall not~~] include shampooing, conditioning, and drying performed in connection with a hair weaving service. Such practice may not include[~~,~~] styling, cutting, or trimming hair except to the extent such activity is incidental to a hair weaving service. Such practice shall not include the application of color chemicals, relaxers, perm solutions, or other preparations to alter the color or to straighten, curl, or alter the structure of hair.

(11) - (23) (No change.)

§83.20. License Requirements--Individuals.

(a) To be eligible for an operator license, facialist specialty license, or manicurist specialty license, [~~hair weaving specialty certificate, hair braiding specialty certificate, wig specialty certificate, or shampoo/conditioning specialty certificate,~~] an applicant must:

(1) submit a completed application on a department-approved form;

(2) pay the fee required under §83.80;

(3) be at least 17 years of age;

(4) have obtained a high school diploma, or the equivalent of a high school diploma, or have passed a valid examination administered by a certified testing agency that measures the person's ability to benefit from training; [~~and~~]

(5) have completed the following hours of cosmetology curriculum in a beauty culture school:

(A) for an operator license, one of the following:

(i) 1500 hours of instruction in a beauty culture school; or

(ii) 1000 hours of instruction in beauty culture courses and 500 hours of related high school courses prescribed by the department in a vocational cosmetology program in a public school.

(B) for a facialist specialty license, 750 hours of instruction.

(C) for a manicurist specialty license, 600 hours of instruction; and[~~.~~]

[~~(D) for a hair weaving specialty certificate, 300 hours of instruction completed in not less than eight weeks from date of enrollment.~~]

[~~(E) for a hair braiding specialty certificate, 35 hours of instruction.~~]

[~~(F) for a wig specialty certificate, 300 hours of instruction completed in not less than eight weeks from date of enrollment.~~]

[~~(G) for a shampoo/conditioning specialty certificate, 150 hours of instruction completed in not less than four weeks from date of enrollment; and~~]

(6) [~~for an operator license, facialist specialty license, manicurist specialty license, hair weaving specialty certificate, wig specialty certificate, or shampoo/conditioning specialty certificate,~~] pass a written and practical examination required under §83.21. [~~No examination is required for a hair braiding specialty certificate.~~]

(b) To be eligible for hair weaving specialty certificate, hair braiding specialty certificate, wig specialty certificate, or shampoo/conditioning specialty certificate, an applicant must:

(1) submit a completed application on a department-approved form;

(2) pay the fee required under §83.80;

(3) be at least 17 years of age;

(4) have completed the following hours of cosmetology curriculum in a beauty culture school:

(A) for a hair weaving specialty certificate, 300 hours of instruction completed in not less than eight weeks from date of enrollment;

(B) for a hair braiding specialty certificate, 35 hours of instruction;

(C) for a wig specialty certificate, 300 hours of instruction completed in not less than eight weeks from date of enrollment; or

(D) for a shampoo/conditioning specialty certificate, 150 hours of instruction completed in not less than four weeks from date of enrollment; and

(5) for a hair weaving specialty certificate, wig specialty certificate, or shampoo/conditioning specialty certificate, pass a written and practical examination required under §83.21. No examination is required for a hair braiding specialty certificate.

(c) [~~(b)~~] To be eligible for an instructor license, facial instructor specialty license or manicure instructor specialty license, an applicant must:

(1) pass a written examination and practical demonstration of teaching skills required under §83.21;

(2) be at least 18 years of age;

(3) have completed the 12th grade or its equivalent;

(4) pay the fee required under §83.80; and

(5) meet the following requirements:

(A) for an instructor license, hold an active operator license and have completed one of the following:

(i) 750 hours in methods of teaching the student; or

(ii) 250 hours in methods of teaching the student, if the applicant can verify two years of working experience in a licensed beauty salon.

(B) for a facial instructor specialty license, hold an active operator or facialist specialty license and have completed one of the following:

(i) 750 hours in methods of teaching the student; or

(ii) 250 hours in methods of teaching the student, if the applicant can verify two years of facial experience in a licensed beauty salon or facial specialty salon.

(C) for a manicure instructor specialty license, hold an active operator or manicurist specialty license and have completed one of the following:

(i) 750 hours of instruction in cosmetology courses and methods of teaching in a department-approved school or program, or

(ii) 250 hours in methods of teaching the student, if the applicant can verify two years of manicure experience in a licensed beauty salon or manicure specialty salon.

(d) [~~(c)~~] To be eligible for a shampoo apprentice permit, an applicant must:

(1) be at least 16 years of age; and

(2) submit a completed application on a department-approved form.

(e) [~~(d)~~] To be eligible for a student permit, an applicant must:

(1) submit a completed application on a department-approved form; and

(2) pay the fee required under §83.80.

(f) [~~(e)~~] To be eligible for a registered examination proctor registration, an applicant must:

(1) have held an active instructor license for at least two of the five years preceding the application;

(2) hold an active instructor license;

(3) obtain a certificate of completion from a department-approved training course;

(4) submit a completed application on a department-approved form; and

(5) pay the applicable fee under §83.80.

(g) [~~(f)~~] A license application is valid for one year from the date it is filed with the department.

§83.22. License Requirements--Beauty Salons, Specialty Salons, and Booth Rentals (Independent Contractors).

[~~(a)~~] To be eligible for a beauty salon, specialty salon, or booth rental license, an applicant must:

(1) obtain the current law and rules book;

(2) comply with the requirements of the Act and this chapter;

(3) submit a completed application on a department-approved form;

(4) pay the fee required under §83.80; and

(5) for a booth rental license, hold an active department-issued cosmetology license.

~~[(b) A beauty salon or specialty salon applicants must be inspected and approved by the department prior to the operation of the beauty or specialty salon. To ensure timely inspection, an applicant should submit a completed application at least 45 days in advance of the anticipated opening date.]~~

§83.23. License Requirements--Beauty Culture Schools.

(a) - (b) (No change.)

(c) Private beauty culture schools must have and maintain the following:

(1) a building of permanent construction [~~floor plan~~] of not less than 3,500 square feet that includes two separate areas, one area for instruction in theory and one area for clinic work, and separate restrooms for male and female;

(2) equipment established by the department sufficient to instruct a minimum of 50 students;

(3) proof of ownership of building or proof of a lease for the first 12 months of operation;

(4) current inspection report(s) of the fire marshal and building official approving or confirming compliance with applicable laws and ordinances; and

(5) a copy of the curriculum approved by the department for each course offered.

(d) Public beauty culture schools must have and maintain the following:

(1) [~~a detailed floor plan showing~~] not less than 2,200 square feet that includes office, dispensary, locker room, classroom space, and at least 1,200 square feet of laboratory space;

(2) - (5) (No change.)

§83.25. License Requirements--Continuing Education.

(a) - (b) (No change.)

(c) To renew a manicure instructor specialty license, manicurist specialty license, facial instructor specialty license, facialist specialty license, hair weaving [~~weaving/braiding~~] specialty certificate, hair braiding specialty certificate, wig specialty certificate, and shampoo/conditioning specialty certificate on or after September 1, 2006, a licensee must complete a total of 8 hours of continuing education through department-approved courses, of which 4 hours must be in Sanitation required under the Act and 16 Texas Administrative Code, Chapter 83.

(d) - (e) (No change.)

(f) A licensee may receive continuing education hours in accordance with the following:

(1) A licensee may not receive continuing education hours for attending the same course more than once.

[~~(2) A licensee may receive continuing education hours for a course if the course provider was approved by the former Texas Cosmetology Commission and the licensee completed the course on or after September 1, 2004 and on or before October 15, 2005.~~]

(2) [~~(3)~~] Except as provided within this subsection, a licensee will receive continuing education hours for only those courses that are registered with the department, under procedures prescribed by the department.

(g) - (j) (No change.)

(k) Notwithstanding Subsections (b), (c), and (d), a licensee may satisfy the continuing education requirement for renewal by completing two hours of Sanitation in department-approved courses, if the licensee:

(1) is at least 65 years of age; and

(2) has held a cosmetology license for at least 15 years.

§83.26. License Requirements--Renewals.

(a) To renew an instructor license, manicure instructor specialty license, facial instructor specialty license, operator license, manicurist specialty license, facialist specialty license, hair weaving [~~weaving/braiding~~] specialty certificate, hair braiding specialty certificate, wig specialty certificate, and shampoo/conditioning specialty certificate, an applicant must:

(1) complete the continuing education requirements under §83.25;

(2) submit a completed application on a department-approved form; and

(3) pay the applicable fee required under §83.80.

(b) - (e) (No change.)

§83.29. Establishment Relocation, Change of Ownership, Owner Death or Incompetency.

(a) Under the Act, a license is not transferable.

(b) If an establishment relocates, the licensee must apply for a new establishment license and verify that the new establishment meets the requirements of the Act and this chapter. Additionally, a relocated beauty culture school must be inspected prior to operation under the Act.

(c) If an establishment changes ownership, the new owner must apply for a new establishment license within 30 days after the change of ownership. Additionally, a beauty culture school must be inspected but [~~and be inspected; however, an establishment~~] may continue to operate pending the department's inspection. A change of ownership includes the following [~~is defined as~~]:

(1) For a sole proprietorship, the licensee no longer owns and/or operates the establishment.

(2) For a partnership, the partnership is dissolved.

(3) For a corporation, the corporation is sold to another person or entity. A change of ownership does not include corporate officer or stockholder restructuring.

(4) Legal incompetence or death.

§83.31. Licenses--License Terms.

(a) The following licenses have a term of two (2) years:

(1) operator license;

(2) manicurist specialty license;

(3) facialist specialty license;

(4) hair weaving [~~weaving/braiding~~] specialty certificate;

(5) hair braiding specialty certificate;

(6) [~~(5)~~] wig specialty certificate;

(7) [~~(6)~~] shampoo/conditioning specialty certificate;

(8) [~~(7)~~] instructor license;

(9) [~~(8)~~] facial instructor specialty license;

(10) [~~(9)~~] manicure instructor specialty license;

(11) [~~(10)~~] booth rental (independent contractor) license;

(12) [~~(11)~~] beauty and specialty salon license; and

(13) [~~(12)~~] student permit.

(b) - (c) (No change.)

§83.40. Private Beauty Culture School Tuition Protection Account.

(a) Pursuant to §1602.463 of the Act, [~~in the event that a student from a closed school is placed in another beauty culture school,~~] the Private Beauty Culture School Tuition Protection Account is created to:

(1) refund tuition and fees to a student if a private beauty culture school closes and the school fails to pay the refund as required by the Act; and

(2) pay the tuition costs and expenses incurred by a private beauty culture school in providing training directly related to educating a [~~the~~] student from a [~~the~~] closed school.

(b) (No change.)

(c) The necessity for assessing the fee will be determined by the department when it conducts its [~~it's~~] annual account balance review prior to December 31st. The fee that is assessed by the department shall be in effect for a period of 12 months.

(d) - (e) (No change.)

(f) In the event a student from a closed school cannot be placed or does not accept a place in another school, a refund, calculated under the closed school's refund policy, may [~~will~~] be paid from the Private Beauty Culture School Tuition Protection Account and the total payment of a claim may not exceed $35,000. The total amount of claims paid against a single closed school may not exceed $100,000.

(g) The executive director may authorize payment to a student from the Private Beauty Culture School Tuition Protection Account if:

(1) the student makes a claim for payment on a form approved by the executive director;

(2) a closed private beauty culture school has failed to pay a refund to the student within 30 days after the date the student became eligible for the refund, and the student has not been placed or accepted a place in another school with appropriate credit given to the student for tuition and fees paid to the closed school;

(3) the executive director determines after investigation that the student is owed the refund; and

(4) the student assigns to the department all rights of the student against the closed school to the extent of the amount paid to the student from the account.

(h) The executive director may authorize payment to a private beauty culture school from the Private Beauty Culture School Tuition Protection Account if:

(1) the school makes a claim for payment on a form approved by the executive director;

(2) the school has incurred expenses in providing training directly related to educating a student from a closed private beauty culture school, including the applicable tuition for the period for which the student paid tuition;

(3) the executive director determines after investigation that the school is entitled to payment from the account; and

(4) the school assigns to the department all rights of the school against the closed school to the extent of the amount paid from the account.

(i) The department shall pay claims on a pro rata basis from appropriated money available in the account if:

(1) the account contains insufficient assets to pay all claims;

(2) insufficient money has been appropriated to the department from the account to pay all claims; or

(3) the total amount of claims against a single closed school exceeds the amount specified in Subsection (f).

(j) The department shall notify a closed private beauty culture school of any claim made against the closed school under this section. Before the executive director may authorize any payment from the account, the school shall have 20 days from the date of notice of the claim to dispute the claim and present evidence to the executive director in opposition to the claim.

(k) If payment is made from the Private Beauty Culture School Tuition Protection Account on a claim against a closed private beauty culture school:

(1) the school shall reimburse the account immediately or agree in writing to reimburse the account, on a schedule to be determined by the executive director;

(2) the school shall immediately pay the student any additional amount due to the student under the Act or agree in writing to pay the student on a schedule to be determined by the executive director;

(3) payments made by a school to the account under this subsection include interest accruing at the rate of eight percent a year beginning on the date the executive director pays the claim;

(4) the department shall be subrogated to all rights of the claimant against the school to the extent of the amount paid to the claimant; and

(5) the department may assess administrative penalties or sanctions against the school and may deny an application for a license, certificate, or permit or an application for renewal of a license, certificate, or permit filed by the holder of the private beauty culture school license.

§83.50. Inspections General.

(a) (No change.)

(b) Inspections shall be performed during the normal operating hours of the cosmetology establishments. Except for initial inspections of beauty culture schools, the department may conduct inspections under the Act and this chapter without advance notice.

(c) - (d) (No change.)

§83.51. Initial Inspections--Inspection of Beauty Culture Schools [~~Cosmetology Establishments~~] Before Operation.

(a) Any new or relocated beauty culture school [~~cosmetology establishment~~] must be inspected and approved by the department before it may operate. Additionally, a beauty culture school [~~cosmetology establishment~~] that has changed ownership must be inspected and approved by the department but may continue to operate prior to inspection.

(b) The beauty culture school [~~cosmetology establishment~~] owner shall request an initial inspection from the department and pay the fee required by §83.80. In order for the department to schedule the initial inspection in a timely manner, the initial inspection request and fee should be submitted to the department no later than forty-five (45) calendar days prior to the opening date of the school [~~establishment~~].

(c) Upon receipt of the owner's request and the fee, the department shall schedule the initial inspection date and notify the owner.

(d) Upon completion of the initial inspection, the owner shall be advised in writing of the results. The inspection report will indicate whether the beauty culture school [~~cosmetology establishment~~] meets or does not meet the minimum requirements of the Act and this chapter.

(e) For beauty culture schools [~~cosmetology establishments~~] that do not meet the minimum requirements, the report will reflect those minimum requirements that remain to be addressed by the owner.

(f) A beauty culture school [~~cosmetology establishment~~] that does not meet the minimum requirements on initial inspection must be reinspected. The beauty culture school [~~cosmetology establishment~~] owner must submit the request for reinspection along with the fee required by §83.80, before the department will perform the reinspection.

§83.52. Periodic Inspections.

(a) Each beauty salon or specialty salon shall be inspected at least once every two years. Each beauty culture school shall be inspected at least twice per year.

(b) - (c) (No change.)

(d) For inspections that are not approved, the inspection report will identify violations that must be corrected by the owner. The report will also indicate the corrective modifications required to address the violations, in accordance with §83.54. Additionally, the department may assess administrative penalties and/or administrative sanctions for [~~certain~~] violations, in accordance with §83.90.

(e) (No change.)

§83.53. Risk-based Inspections.

(a) (No change.)

(b) Cosmetology establishments subject to risk-based inspections will be scheduled for inspection based on the following risk criteria and inspection frequency:
Figure: 16 TAC §83.53(b)

(c) - (d) (No change.)

(e) For inspections that are not approved, the inspection report will identify violations that must be corrected by the owner of the cosmetology establishment. The report will also indicate the corrective modifications required to address the violations, in accordance with §83.54. Additionally, the department may assess administrative penalties and/or administrative sanctions for [~~certain~~] violations, in accordance with §83.90.

(f) Cosmetology establishments [~~Beauty salons and specialty salons~~] on a risk-based inspection schedule that have no significant violations [~~of sanitation or licensing requirements~~] in four consecutive inspections, may be moved to a less frequent risk-based inspection schedule or returned to a periodic schedule of inspections. The department will notify the owner of the establishment [~~salon~~], in writing, if there is a change in the establishment's [~~salon's~~] risk-based schedule or if the establishment [~~salon~~] is returned to a periodic inspection schedule.

[~~(g) Beauty culture schools, public or private, subject to the Tier 2 or Tier 3 schedule, that have no violations of sanitation or licensing requirements in four consecutive inspections, may be moved to a less frequent risk-based inspection schedule. The department will notify the owner or authorized representative of the school, in writing, if there is a change in the school's risk-based schedule.~~]

§83.54. Corrective Modification Following Inspection.

(a) When corrective modifications to achieve compliance are required[~~, the department~~]:

(1) the department shall provide the owner a list of required corrective modification(s); [~~and a deadline for completing modifications; and~~]

(2) within 10 days after receiving the list of required corrective modifications, the owner shall complete all corrective modifications and provide written verification of the corrective modifications to the department; and

(3) [~~(2)~~] the department may grant an extension, consistent with established procedures, if satisfactory evidence is presented showing that the time period specified is inadequate to perform the necessary corrections.

(b) When corrective modifications to achieve compliance involve violations of [~~certain~~] sanitation rules or violations relating to unlicensed practice, those violations may be referred to the department's enforcement division for further action. The cosmetology establishment will be contacted by the department to arrange final resolution of these violations. Additionally, the department may assess administrative penalties and/or administrative sanctions for [~~certain~~] violations or for failure to complete corrective modifications timely or provide written verification to the department timely, in accordance with §83.90.

§83.71. Responsibilities of Beauty Salons, Specialty Salons, Booth Rentals.

(a) - (e) (No change.)

(f) In addition to the requirements of subsection (e):

(1) - (5) (No change.)

(6) hair weaving [~~weaving/braiding~~] salons shall provide the following equipment for each licensee present and providing services:

(A) one work station;

(B) one styling chair;

(C) a sufficient amount of shampoo bowls for licensees providing hair weaving services; and

(D) one chair dryer/handheld dryer for each three licensees providing hair weaving services.

(7) hair braiding salons shall provide the following equipment for each licensee present and providing services:

(A) one work station; and

(B) one styling chair.

(g) - (k) (No change.)

§83.80. Fees.

(a) Application fees.

(1) - (3) (No change.)

(4) Hair Weaving [~~weaving/braiding~~] Specialty Certificate--$53

(5) Hair Braiding Specialty Certificate--$53

(6) [~~(5)~~] Wig Specialty Certificate--$53

(7) [~~(6)~~] Shampoo-Conditioning Specialty Certificate--$53

(8) [~~(7)~~] Student Permit--$25 (includes law and rules book fee)

(9) [~~(8)~~] Instructor License--$70

(10) [~~(9)~~] Facial Instructor Specialty License--$70

(11) [~~(10)~~] Manicure Instructor Specialty License--$70

(12) [~~(11)~~] Examination Proctor Registration--$25

(13) [~~(12)~~] Beauty and specialty salons--$106

(14) [~~(13)~~] Booth Rental (Independent Contractor) License--$67

(15) [~~(14)~~] Private Beauty Culture School--$500

(b) Renewal fees.

(1) - (3) (No change.)

(4) Hair Weaving [~~weaving/braiding~~] Specialty Certificate--$53

(5) Hair Braiding Specialty Certificate--$53

(6) [~~(5)~~] Wig Specialty Certificate--$53

(7) [~~(6)~~] Shampoo-Conditioning Specialty Certificate--$53

(8) [~~(7)~~] Student Permit--No charge.

(9) [~~(8)~~] Instructor License--$70

(10) [~~(9)~~] Facial Instructor Specialty License--$70

(11) [~~(10)~~] Manicure Instructor Specialty License--$70

(12) [~~(11)~~] Examination Proctor Registration--$25

(13) [~~(12)~~] Beauty and specialty salons--$69

(14) [~~(13)~~] Booth Rental (Independent Contractor) License--$67

(15) [~~(14)~~] Private Beauty Culture School--$200

(c) - (k) (No change.)

§83.106. Health and Safety Standards--Manicure and Pedicure Services.

(a) - (c) (No change.)

(c) All metal [~~non-porous~~] manicure and pedicure tools shall be properly cleaned, disinfected and sterilized prior to each service, in accordance with this chapter, regardless of the tool's multiuse for only a single client or for multiple clients.

(d) - (g) (No change.)

§83.110. Health and Safety Standards--Hair Weaving and Hair Braiding Services.

(a) Cosmetologists, wig specialists, [~~and~~] hair weavers, and hair braiders shall wash their hands with soap and water, or use a liquid hand sanitizer, prior to performing any services on a client.

(b) - (d) (No change.)

§83.114. Health and Safety Standards--Establishments.

(a) - (e) (No change.)

(f) Food or beverages shall not be prepared on licensed premises for sale [~~or client consumption~~]. Pre-packaged food or beverages may be sold to or consumed by clients.

(g) - (i) (No change.)

§83.120. Technical Requirements--Curriculum.

(a) - (c) (No change).

(d) Practical Applications of the Curriculum
Figure: 16 TAC §83.120(d)

(e) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 30, 2007.

TRD-200703320
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: September 9, 2007
For further information, please call: (512) 463-7348

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PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES

SUBCHAPTER E. BOOKS AND RECORDS

16 TAC §402.500

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Lottery Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Lottery Commission (Commission) proposes the repeal of Title 16, Part 9, Chapter 402, Subchapter E, §402.500 (relating to General Audit Rule). By separate action, the Commission will publish proposed new Title 16, Part 9, Chapter 402, Subchapter G, §402.715 (relating to Compliance Audit). The Commission is proposing the repeal of the current rule and the adoption of the new rule, rather than an amendment of the current rule, because the format and substantive provisions of the new rule will be changed significantly. The proposed new rule is written in a question and answer format. The new rule is also being assigned a new rule number within Chapter 402.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed repeal will be in effect, there will be no significant fiscal impact for state or local government as a result of this proposed repeal. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no adverse effect on individuals as a result of the repeal.

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed repeal of the existing rule and subsequent proposed new rule will be in effect, the public benefit anticipated is a more understandable rule that will provide interested parties with information about the audit process and related requirements.

The Commission requests comments on the proposed repeal from any interested person. Comments on the proposed repeal may be submitted to Sandra Joseph, Assistant General Counsel, by mail at P.O. Box 16630, Austin, Texas 78711; by facsimile at (512) 344-5189; or by email at www.txlottery.org. The Commission will hold a public hearing on this proposal at 11:00 a.m. on August 21, 2007, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposed repeal in order to be considered.

The repeal is proposed under the Texas Occupations Code §2001.054 which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act.

The repeal implements the Texas Occupations Code, Chapter 2001.

§402.500. General Audit Rule.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 27, 2007.

TRD-200703269
Andy Marker
Chief, General Counsel Section
Texas Lottery Commission
Earliest possible date of adoption: September 9, 2007
For further information, please call: (512) 344-5012

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SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

16 TAC §402.708

The Texas Lottery Commission (Commission) proposes new Title 16, Part 9, Chapter 402, Subchapter G, §402.708 (relating to Dispute Resolution). The purpose of the proposed new rule is to provide an informal process to resolve disputed issues and enforcement actions related to bingo operations as an alternative to the formal process described in the Bingo Enabling Act, Occupations Code Chapter 2001 and the Administrative Procedures Act, Government Code Chapter 2001. The proposed new rule is not intended to supersede the formal process. Instead, it is an alternative way to resolve disputed issues and enforcement actions relating to the identification of violations of the Bingo Enabling Act and/or administrative rules. The proposed new rule is written in a question and answer format. Specifically, the rule sets out definitions for terms used in the rule, identifies who can request a dispute resolution conference, how to request a conference, the circumstances in which a request for a conference will be denied, the time and place of the conference, what will happen in the event of not attending a previously scheduled conference or not rescheduling a conference, who must attend the conference as well who can attend on behalf of the licensee or

unit, who will attend the conference on behalf of the Charitable Bingo Operations Division, what happens at the conference, what information must be provided in advance of the conference, what happens if an agreement is reached at the conference, and what happens if an agreement is not reached at the conference.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed new rule will be in effect, there will be no significant fiscal impact for state or local governments as a result of this new rule. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the new rule as proposed.

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed new rule will be in effect, the public benefit anticipated is the ability to resolve disputed issues and enforcement actions through a dispute resolution process that is an alternative to a formal enforcement hearings process. Use of an alternative dispute resolution to resolve disputed issues allows the parties to settle the dispute in a more efficient and less costly manner than through a formal enforcement hearings process.

The Commission requests comments on the proposed new rule from any interested person. Comments on the proposed rule may be submitted to Sandra Joseph, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at www.txlottery.org. The Commission will hold a public hearing on this proposal at 11:00 a.m. on August 21, 2007, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposed new rule in order to be considered.

The new rule is proposed under Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act and under Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed new rule implements Occupations Code, Chapter 2001.

§402.708. Dispute Resolution.

(a) What are the definitions for the terms used in this rule?

(1) Determination letter--a notice issued by the director stating the basis for the conclusion that a violation occurred, recommending that an administrative penalty be imposed on the person alleged to have committed the violation, and recommending the amount of the proposed penalty. The notice must include a brief summary of the alleged violation; include the amount of the administrative penalty recommended; and inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(2) Dispute resolution--an informal process available to licensed authorized organizations to resolve regulatory disputes in a fair, competent, and consistent manner.

(3) Dispute resolution conference--an informal meeting to resolve a disputed issue(s) related to an audit finding(s) contained within a final audit report or a disputed issue(s) contained within a notice of opportunity to show compliance letter.

(4) Dispute resolution officer--the Director or his designee who will facilitate or manage the dispute resolution conference and guide and assist the participants.

(b) Who may request a dispute resolution conference? A licensed authorized organization that does not agree with the findings in its final audit report or the information in a notice of opportunity to show compliance letter may request a dispute resolution conference.

(c) How do I request a dispute resolution conference?

(1) You may request a dispute resolution conference by completing and submitting a Request for Informal Dispute Resolution Form to the Director.

(2) Disputed issues must be identified on the form.

(3) The form must be signed by:
Figure: 16 TAC §402.708(c)(3)

(4) You must submit the completed Request for Informal Dispute Resolution Form no later than 20 calendar days from the date you receive a determination letter, the final audit report, or notice of opportunity to show compliance letter.

(5) You may provide supporting documentation related to your position with your request.

(d) Under what circumstances will the Director deny a request for a dispute resolution conference? The Director will not grant a request for a dispute resolution conference if:

(1) You are not a licensed authorized organization that disputes the findings in the final audit report or the information in a notice of opportunity to show compliance letter;

(2) You fail to timely submit the completed Request for Informal Dispute Resolution Form; or

(3) A dispute resolution conference has been held previously on the disputed issue(s).

(e) When and where will the Dispute Resolution Conference be held?

(1) Charitable Bingo Operations Division staff will contact you within 15 calendar days from the date we receive a Request for Informal Dispute Resolution Form, in order to schedule a mutually agreeable date, time, and location for the dispute resolution conference.

(2) The dispute resolution conference may be held in person, by videoconference, or by telephone conference call. The date, time, and location of the conference must be agreeable to all parties.

(3) A dispute resolution conference may be rescheduled due to unforeseen events upon agreement of the parties. You must contact the Commission within 24 hours prior to the scheduled conference time to reschedule a dispute resolution conference.

(f) What happens if I don't attend or reschedule a Dispute Resolution Conference? The dispute resolution process will end. The administrative process will continue and a formal hearing will proceed. We will notify you of the date of the administrative hearing.

(g) Who attends the Dispute Resolution Conference? Depending on your regulatory classification, certain individuals from your organization must attend the dispute resolution conference. You must notify the Director at least 24 hours before the scheduled dispute resolution conference of who is attending.
Figure: 16 TAC §402.708(g)

(h) Who will represent the Charitable Bingo Operations Division at a Dispute Resolution Conference?

(1) Appropriate Commission staff from the Charitable Bingo Operations Division, Legal Services Division, and/or Enforcement Division will attend and participate in the dispute resolution conference to provide relevant information and documentation regarding the disputed issues and to attempt to reach a resolution of the dispute.

(2) The dispute resolution officer and dispute resolution support staff will facilitate the dispute resolution process but will not advocate on behalf of any party.

(i) What happens at the Dispute Resolution Conference?

(1) Each party states their position related to the disputed issues and presents appropriate documentation to substantiate their position on all disputed issues.

(2) The dispute resolution officer works with the parties to reach a settlement.

(3) Any resolution reached as a result of the dispute resolution conference will be through voluntary agreement of the parties.

(j) Do I need to provide any information prior to the Dispute Resolution Conference? If the Dispute Resolution Conference is conducted via telephone or videoconferencing, you must provide to the Director a copy of any documentation you plan to present at least 48 hours prior to the conference. If the basis of the dispute involves an audit finding, the Director will provide the dispute resolution officer with the information submitted by the organization, the final audit report, and the determination letter. If the basis of the dispute is other than an audit finding, the Director will provide the dispute resolution officer the notice of opportunity to show compliance letter and the underlying report that is the basis for the notice of opportunity to show compliance letter. The dispute resolution officer may contact both parties and request additional information be submitted to him prior to dispute resolution conference.

(k) What happens if an agreement is reached at the dispute resolution conference?

(1) If the parties agree to a resolution of disputed issues, the dispute resolution officer will prepare a Dispute Resolution Settlement Agreement for review, approval, and signature by both parties at the Dispute Resolution Conference.

(2) The Agreement will include:

(A) the violation(s),

(B) the resolution of the disputed issues(s), and

(C) corrective action you must take.

(3) The Agreement must be signed by an officer/director or bingo chairperson and the primary operator.

(l) What happens if an agreement is not reached at the dispute resolution conference? The matter will proceed to a formal administrative hearing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 27, 2007.

TRD-200703270

Andy Marker
Chief, General Counsel Section
Texas Lottery Commission
Earliest possible date of adoption: September 9, 2007
For further information, please call: (512) 344-5012

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16 TAC §402.715

The Texas Lottery Commission (Commission) proposes new Title 16, Part 9, Chapter 402, Subchapter G, §402.715 (relating to Compliance Audit). The purpose of the proposed new rule is to provide clarification and guidance to licensees concerning the audit process authorized by Occupations Code §2001.560. The proposed new rule is written in plain language in a question and answer format. The new rule sets out definitions for terms used in the rule, describes what a compliance audit is, identifies the objectives of a compliance audit, describes how a licensee is selected for a compliance audit, describes how a licensee is notified that it has been selected for a compliance audit, sets out the time period the compliance audit will typically cover, identifies the information that will need to be provided and when it will need to be provided, sets out the effect of not providing the requested records, describes what an entrance conference is, what will occur during the entrance conference, when and where the entrance conference will occur, who must attend the entrance conference as well who can attend the conference, where the audit will be conducted, how long the audit will take, when the audit findings will be available, what is an exit conference, who must attend the exit conference, what happens if the licensee does not agree with the draft audit report or the audit findings, whether the licensee will be able to respond to the draft audit report, what information must be included in the response, what will happen after the response, what will happen if the licensee does not respond, who will receive the final audit report, what will happen after the issuance of the final audit report, and what the licensee can do if the licensee disagrees with the determination letter.

Kathy Pyka, Controller, has determined that for each year of the first five years the new rule will be in effect, there will be no foreseeable implications relating to cost or revenues of the state or local governments as a result of enforcing or administering the rule. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the rule.

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed new rule will be in effect, the public benefit anticipated is providing to licensees specific information about the audit process and what a licensee may expect during an audit to ensure compliance with the Bingo Enabling Act and Charitable Bingo Administrative Rules.

The Commission requests comments on the proposed new rule from any interested person. Comments on the proposed rule may be submitted to Sandra Joseph, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at www.txlottery.org. The Commission will hold a public hearing on this proposal at 11:00 a.m. on August 21, 2007, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposed new rule in order to be considered.

The new rule is proposed under Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act and under Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of Chapter 467 and the laws under the Commission's jurisdiction.

The proposed new rule implements Occupations Code, Chapter 2001.

§402.715. Compliance Audit.

(a) What are definitions for the terms used in this rule?

(1) Audit Finding--an instance of non-compliance with Occupations Code Chapter 2001, Bingo Enabling Act (Act) or Charitable Bingo Administrative Rules (Rules) identified in a compliance audit.

(2) Licensee--a licensed authorized organization that holds a license to conduct bingo under the Act or a group of licensed authorized organizations operating under a unit agreement.

(b) What is a compliance audit?

(1) An official examination of the licensee's bingo operations to:

(A) determine compliance with the Act and Rules;

(B) provide objective information to the licensee's management and those persons responsible for the governance and oversight of the licensee: and,

(C) contribute to public accountability.

(2) A compliance audit may include physically inspecting bingo equipment and premises, observing the conduct of the bingo game, inquiry of management and staff, reviewing the licensee's financial accounts and records, or any other activity necessary to meet the compliance audit objectives.

(3) Compliance audits are conducted in accordance with the Generally Accepted Government Auditing Standards promulgated by the Government Accountability Office and Commission policies and procedures.

(c) What are the objectives of a compliance audit? The activities of an audit are designed to accomplish the following objectives:

(1) determine whether the licensee is in compliance with the Act and Rules;

(2) determine whether the information reported to the Commission is accurate; and,

(3) determine whether proceeds from the conduct of bingo are used for authorized purposes.

(d) How is a licensee selected for a compliance audit? A licensee may be selected for an audit based on any of the following:

(1) a statewide risk assessment;

(2) a request by Charitable Bingo Operations Division management;

(3) a request by another division of the Commission;

(4) in conjunction with or as a result of a complaint; or

(5) a request by the licensee's management or its oversight authorities.

(e) How is the licensee notified that it has been selected to be audited? The licensee will receive written notification of an audit in order to allow time to gather any requested information.

(f) What time period will the audit cover? Typically the audit will cover the most recently completed calendar year; however, the audit period may be extended.

(g) What information does the licensee need to provide for the audit? The licensee must provide:

(1) the records identified on the records request form that is attached to the notification letter;

(2) the completed internal control questionnaire that is provided with the notification letter; and,

(3) any additional records or information requested by the auditor.

(h) When does the licensee need to provide the records and the completed internal control questionnaire? The requested records and the internal control questionnaire must be provided to the auditor before or at the entrance conference.

(i) Does the licensee need to provide original records? No. The licensee may provide the auditor with copies of records. If original records are supplied, the auditor will provide a receipt to the licensee.

(j) What if the licensee does not provide the requested records?

(1) The Commission will send the licensee a demand letter requesting the records.

(2) If the licensee does not respond to the demand letter or provides insufficient records, the audit will be conducted using any information that the auditor is able to get from other sources.

(3) The audit report will discuss efforts to collect records necessary to conduct the audit.

(4) Administrative enforcement action may result when requested records are not provided.

(k) What is an entrance conference? An entrance conference is a meeting at which the audit team leader will collect the required records and discuss:

(1) the audit process;

(2) what the audit will cover;

(3) how the results of the audit will be shared;

(4) a planned date for finishing fieldwork; and

(5) the completed internal control questionnaire.

(l) When and where will the entrance conference be held?

(1) The audit team leader will contact the licensee to schedule a mutually agreeable time and place for the entrance conference.

(2) The entrance conference is held at a convenient location, for example, the bingo hall, the bookkeeper's office, the licensee's primary business office, or the regional audit office.

(m) Who attends the entrance conference?

(1) The following individuals from the organization are required to attend the entrance conference:

(A) bingo chairperson;

(B) primary operator; and

(C) unit manager or designated agent, if applicable.

(2) The organization may designate any other individual(s) to attend the conference also, including any other officer, an accountant, a bookkeeper, or an attorney.

(n) Where will the audit be conducted? The audit is typically conducted at the Commission's regional office or at a location the licensee provides. The location should include office furniture and equipment that allows the audit staff to efficiently perform audit activities.

(o) How long will the audit take? An audit may take a few weeks to several months to complete depending upon several factors such as the time period the audit covers, scope of the audit, completeness of the records, licensee's cooperation, availability and condition of the licensee's records, and availability of agency records.

(p) When will the audit results be given? Audit results will be given to the licensee at the exit conference. However, the audit team will discuss any issues found throughout the audit, and the licensee may ask about this information at any time during the audit.

(q) What is an exit conference? An exit conference is a meeting at which the audit team leader will discuss the results of the audit included in the draft audit report. The exit conference is an additional opportunity for the licensee to provide records that may resolve audit findings.

(r) Who attends the exit conference?

(1) The following individuals from the licensee are required to attend the exit conference:

(A) bingo chairperson;

(B) primary operator; and

(C) unit manager or designated agent, if applicable.

(2) Any other individual(s) may attend the conference also, including any other officer, an accountant, a bookkeeper, or an attorney.

(s) What if the licensee disagrees with the draft audit report or findings? Within 10 calendar days from the date of the exit conference, the licensee may request in writing a meeting with the audit manager to discuss any concerns about the audit report or findings. The results of the meeting with the audit manager will be considered in the preparation of the final audit report.

(t) Is there an opportunity to respond to the draft audit report? Yes. Although no response is required, if the licensee wants to respond, the response must be in writing and be sent to the auditor no later than 20 calendar days from the date of the exit conference. It would be beneficial to include any documentation to support the response.

(u) What information must be included in a response to the draft audit report? If the licensee chooses to respond, the response must include:
Figure: 16 TAC §402.715(u)

(v) What happens after the licensee responds to the draft audit report? The responses will be reviewed and, if appropriate, changes will be made to the draft audit report. The responses will be included in the final audit report. The final audit report will be mailed to the licensee.

(w) What happens if the licensee does not respond to the draft audit report? The final audit report will be issued. The final audit report will include a statement that the licensee did not provide a written response to the audit findings and recommendations.

(x) Who receives the final audit report? The final audit report is sent to the following individuals:

(1) two officers, including the bingo chairperson;

(2) primary operator; and

(3) unit manager or designated agent, if applicable.

(y) What happens after the licensee receives the final audit report?

(1) If there are no audit findings, no further action is required.

(2) If there are audit findings, a Determination Letter outlining the next steps will be sent to the licensee no later than 14 calendar days after the date of the final audit report.

(z) What if the licensee disagrees with the Determination Letter? The licensee may request a dispute resolution conference or request a hearing no later than 20 calendar days after the licensee receives the Determination Letter. For more information, see 16 TAC §402.708 pertaining to dispute resolution.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 27, 2007.

TRD-200703295
Andy Marker
Chief, General Counsel Section
Texas Lottery Commission
Earliest possible date of adoption: September 9, 2007
For further information, please call: (512) 344-5012

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 111. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR MATHEMATICS

SUBCHAPTER D. OTHER HIGH SCHOOL MATHEMATICS COURSES

19 TAC §§111.56 - 111.59

The State Board of Education (SBOE) proposes amendments to §§111.56 - 111.59, concerning the Texas Essential Knowledge and Skills for certain high school mathematics courses. The sections establish general and content requirements for International Baccalaureate (IB) mathematics courses for which students may be awarded high school graduation credit. The proposed amendments would reflect technical corrections to the titles of the IB mathematics courses.

IB courses were included in 19 TAC Chapter 111, Texas Essential Knowledge and Skills for Mathematics, Subchapter D, Other High School Mathematics Courses, in 1998 to allow students studying under this program to earn mathematics credit toward graduation for IB mathematics courses. The course titles for IB mathematics courses have been changed by the International Baccalaureate Organization. The proposed amendments would bring the titles in 19 TAC Chapter 111, Subchapter D, into alignment with the current IB titles.

Susan Barnes, associate commissioner for standards and programs, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for

state or local government as a result of enforcing or administering the amendments.

Dr. Barnes has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments would be that course titles in SBOE rules will accurately reflect actual IB course titles. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments; and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum.

The amendments implement the Texas Education Code, §§7.102(c)(4), 28.002, and 28.025.

§111.56. IB Mathematical Studies Standard [~~Subsidiary~~] Level (One-Half to One Credit).

(a) General requirements. Students can be awarded one-half to one credit for successful completion of IB Mathematical Studies Standard [~~Subsidiary~~] Level. To offer this course, the district must meet all requirements of the International Baccalaureate Organization, including teacher training/certification and IB assessment. Recommended prerequisites: Algebra II, Geometry.

(b) Content requirements. Content requirements for IB Mathematical Studies Standard [~~Subsidiary~~] Level are prescribed by the International Baccalaureate Organization. Curriculum guides may be obtained from International Baccalaureate of North America.

§111.57. IB Mathematics Standard [~~Mathematical Methods Subsidiary~~] Level (One-Half to One Credit).

(a) General requirements. Students can be awarded one-half to one credit for successful completion of IB Mathematics Standard [~~Mathematical Methods Subsidiary~~] Level. To offer this course, the district must meet all requirements of the International Baccalaureate Organization, including teacher training/certification and IB assessment. Recommended prerequisites: Algebra II, Geometry.

(b) Content requirements. Content requirements for IB Mathematics Standard [~~Mathematical Methods Subsidiary~~] Level are prescribed by the International Baccalaureate Organization. Curriculum guides may be obtained from International Baccalaureate of North America.

§111.58. IB Mathematics Higher Level (One-Half to One Credit).

(a) General requirements. Students can be awarded one-half to one credit for successful completion of IB Mathematics Higher Level. To offer this course, the district must meet all requirements of the International Baccalaureate Organization, including teacher training/certification and IB assessment. Recommended prerequisite: IB Mathematical Studies Standard [~~Subsidiary~~] Level or IB Mathematics Standard [~~Mathematical Methods Subsidiary~~] Level.

(b) Content requirements. Content requirements for IB Mathematics Higher Level are prescribed by the International Baccalaureate Organization. Curriculum guides may be obtained from International Baccalaureate of North America.

§111.59. IB Further [~~Advanced~~] Mathematics Standard [~~Subsidiary~~] Level (One-Half to One Credit).

(a) General requirements. Students can be awarded one-half to one credit for successful completion of IB Further [~~Advanced~~] Mathematics Standard [~~Subsidiary~~] Level. To offer this course, the district must meet all requirements of the International Baccalaureate Organization, including teacher training/certification and IB assessment. Recommended prerequisite: IB Mathematics Higher Level.

(b) Content requirements. Content requirements for IB Further [~~Advanced~~] Mathematics Standard [~~Subsidiary~~] Level are prescribed by the International Baccalaureate Organization. Curriculum guides may be obtained from International Baccalaureate of North America.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 26, 2007.

TRD-200703246
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: September 9, 2007
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 850. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

SUBCHAPTER A. AUTHORITY AND RESPONSIBILITIES

22 TAC §850.1

The Texas Board of Professional Geoscientists (TBPG or Board) proposes an amendment to 22 TAC §850.1, regarding the Board's authority. The proposed amendment revises the language to make reference to the Texas Occupations Code.

Mr. Vince Houston, Acting Executive Director of TBPG, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Houston has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be enhancement of the professional practice of geoscientists by providing a clear citation

to the relevant statutory authority. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on this proposal may be submitted in writing to: Molly B. Roman, Administrative Coordinator, P.O. Box 13225, Austin, Texas 78711, (512) 936-4405. Comments may also be submitted electronically to mroman@tbpg.state.tx.us or faxed to (512) 936-4409. Comments must be submitted no later than 30 days from the date the proposed amendments are posted in the *Texas Register*. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by Ms. Roman no more than 15 calendar days after notice of proposed amendments to this section have been published in the *Texas Register*.

This amendment is proposed under the Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce rules consistent with the Texas Geoscience Practice Act and necessary for the performance of its duties.

The proposed amendment implements the Texas Occupations Code, §1002.151.

§850.1. Authority.

These rules are promulgated under the authority of the Texas Board of Professional Geoscientists, Texas Occupations Code, Chapter 1002 [~~Senate Bill 405, 77th Legislature~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 24, 2007.

TRD-200703197
Vincent Houston
Acting Executive Director
Texas Board of Professional Geoscientists
Earliest possible date of adoption: September 9, 2007
For further information, please call: (512) 936-4405

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22 TAC §850.10

The Texas Board of Professional Geoscientists (TBPG or Board) proposes an amendment to 22 TAC §850.10, regarding definitions. The proposed amendment revises the language to make reference to the Texas Occupations Code.

Mr. Vince Houston, Acting Executive Director of TBPG, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Houston has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be enhancement of the professional practice of geoscientists by providing a clear citation to the relevant statutory authority. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on this proposal may be submitted in writing to: Molly B. Roman, Administrative Coordinator, P.O. Box 13225, Austin, Texas 78711, (512) 936-4405. Comments may also be submitted electronically to mroman@tbpg.state.tx.us or faxed to (512) 936-4409. Comments must be submitted no later than 30 days from the date the proposed amendments are posted in the *Texas Register*. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by Ms. Roman no more than 15 calendar days after notice of proposed amendments to this section have been published in the *Texas Register*.

This amendment is proposed under the Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce rules consistent with the Texas Geoscience Practice Act and necessary for the performance of its duties.

The proposed amendment implements the Texas Occupations Code, §1002.151.

§850.10. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) The Act-- Texas Occupations Code, Chapter 1002[~~Senate Bill 405, 77th Legislature~~].

(3) - (19) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 24, 2007.

TRD-200703198
Vincent Houston
Acting Executive Director
Texas Board of Professional Geoscientists
Earliest possible date of adoption: September 9, 2007
For further information, please call: (512) 936-4405

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CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING RULES

SUBCHAPTER A. LICENSING

22 TAC §851.10

The Texas Board of Professional Geoscientists (TBPG or Board) proposes an amendment to 22 TAC §851.10, regarding definitions. The proposed amendment revises the language to make reference to the Texas Occupations Code.

Mr. Vince Houston, Acting Executive Director of TBPG, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Houston has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be enhancement of the professional practice of geoscientists by providing a clear citation to the relevant statutory authority. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on this proposal may be submitted in writing to: Molly B. Roman, Administrative Coordinator, P.O. Box 13225, Austin, Texas 78711, (512) 936-4405. Comments may also be submitted electronically to mroman@tbpg.state.tx.us or faxed to (512)

936-4409. Comments must be submitted no later than 30 days from the date the proposed amendments are posted in the *Texas Register*. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by Ms. Roman no more than 15 calendar days after notice of proposed amendments to this section have been published in the *Texas Register*.

This amendment is proposed under the Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce rules consistent with the Texas Geoscience Practice Act and necessary for the performance of its duties.

The proposed amendment implements the Texas Occupations Code, §1002.151.

§851.10. Definitions.

The following words and terms have the following meanings:

(1) - (18) (No change.)

(19) Professional geoscience services--Services which must be performed by or under the direct supervision of a licensed geoscientist and which meet the definition of the practice of geoscience as defined in the Texas Occupations Code, §1002.002(3) [~~Act, Section 1.02(3)~~]. A service shall be conclusively considered a professional geoscience service if it is delineated in that section; other services requiring a professional geoscientist by contract, or services where the adequate performance of that service requires a geoscience education, training, or experience in the application of special knowledge or judgment of the geological, geophysical or soil sciences to that service shall also be conclusively considered a professional geoscience service.

(20) - (21) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 25, 2007.

TRD-200703223
Vincent Houston
Acting Executive Director
Texas Board of Professional Geoscientists
Earliest possible date of adoption: September 9, 2007
For further information, please call: (512) 936-4405

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SUBCHAPTER B. CODE OF PROFESSIONAL CONDUCT

22 TAC §851.101

The Texas Board of Professional Geoscientists (TBPG or Board) proposes an amendment to 22 TAC §851.101, regarding the code of professional conduct. The proposed amendment revises the language to make reference to the Texas Occupations Code.

Mr. Vince Houston, Acting Executive Director of TBPG, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Houston has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be enhancement of the professional practice of geoscientists by providing a clear citation to the relevant statutory authority. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on this proposal may be submitted in writing to: Molly B. Roman, Administrative Coordinator, P.O. Box 13225, Austin, Texas 78711, (512) 936-4405. Comments may also be submitted electronically to mroman@tbpg.state.tx.us or faxed to (512) 936-4409. Comments must be submitted no later than 30 days from the date the proposed amendments are posted in the *Texas Register*. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by Ms. Roman no more than 15 calendar days after notice of proposed amendments to this section have been published in the *Texas Register*.

This amendment is proposed under the Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce rules consistent with the Texas Geoscience Practice Act and necessary for the performance of its duties.

The proposed amendment implements the Texas Occupations Code, §1002.151.

§851.101. General.

(a) These rules of professional conduct are promulgated pursuant to the Texas Geoscience Practice Act (the Act), Texas Occupations Code, §1002.153 [~~Senate Bill 405, 77th Legislative Session~~], which directs the Board to adopt a code of professional conduct that is binding on all license holders under the Act. Except as otherwise noted, these rules of professional conduct apply only to situations which are directly or indirectly related to the practice of geoscience.

(b) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 25, 2007.

TRD-200703224
Vincent Houston
Acting Executive Director
Texas Board of Professional Geoscientists
Earliest possible date of adoption: September 9, 2007
For further information, please call: (512) 936-4405

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22 TAC §851.107

The Texas Board of Professional Geoscientists (TBPG or Board) proposes an amendment to 22 TAC §851.107, regarding the prevention of unauthorized practice. The proposed amendment revises the language to make reference to the Texas Occupations Code.

Mr. Vince Houston, Acting Executive Director of TBPG, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Houston has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be enhancement of the professional practice of geoscientists by providing a clear citation to the relevant statutory authority. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on this proposal may be submitted in writing to: Molly B. Roman, Administrative Coordinator, P.O. Box 13225, Austin, Texas 78711, (512) 936-4405. Comments may also be submitted electronically to mroman@tbpg.state.tx.us or faxed to (512) 936-4409. Comments must be submitted no later than 30 days from the date the proposed amendments are posted in the *Texas Register*. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by Ms. Roman no more than 15 calendar days after notice of proposed amendments to this section have been published in the *Texas Register*.

This amendment is proposed under the Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce rules consistent with the Texas Geoscience Practice Act and necessary for the performance of its duties.

The proposed amendment implements the Texas Occupations Code §1002.151.

§851.107. Prevention of Unauthorized Practice.

(a) - (b) (No change.)

(c) A Geoscientist who fails to renew his/her license prior to its annual expiration date shall not use the title "geoscientist" and shall not engage in the "public practice of geoscience" as defined by the Texas Occupations Code §1002.002 [~~§1.02 of the Act~~] until after the Geoscientist's license has been properly renewed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 25, 2007.

TRD-200703225
Vincent Houston
Acting Executive Director
Texas Board of Professional Geoscientists
Earliest possible date of adoption: September 9, 2007
For further information, please call: (512) 936-4405

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 290. PUBLIC DRINKING WATER

The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §§290.38, 290.39, 290.41, 290.42, 290.44 - 290.47, 290.101 - 290.104, 290.106 - 290.110, 290.112 - 290.114, 290.117 - 290.119, 290.121, 290.122, 290.272, 290.273, 290.275, and the repeal of §290.111. The commission proposes new §§290.111, 290.115, and 290.116.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The primary purposes of the proposed amendments and new rules are to implement federal regulations pertaining to the safety of drinking water from groundwater and surface water sources. The proposed amendments also limit the exposure of the public to waterborne disease and enhance the customer's ability to know if there is something harmful in their drinking water. These amendments and new rules are proposed in response to the United States Environmental Protection Agency (EPA) Stage 2 Disinfectants and Disinfection Byproducts Rule (DBP2) and Long Term 2 Enhanced Surface Water Treatment Rule (LT2) promulgated in January 2006; the Ground Water Rule (GWR) promulgated in October 2006; and the Public Notification Rule (PNR) promulgated in 2000. These rules are necessary for the state to maintain primacy for regulating public water systems (PWSs).

DBP2 provides public drinking water customers more equitable protection from the risks of disinfection byproducts. Its provisions include a one-year period of EPA-required increased early implementation sampling called the Initial Distribution System Evaluation (IDSE) that will be used to select new compliance monitoring sites; new compliance determination methods; operational evaluation level reporting; increased detail for currently required monitoring plans; and updated analytical methods.

LT2 provides increased protection from the protozoan *Cryptosporidium* found in surface water. Its provisions include a special period of increased early implementation sampling to determine the concentration of *Cryptosporidium* oocysts in source water; new required treatment levels for *Cryptosporidium* removal determined on a plant-by-plant basis; defined technologies for *Cryptosporidium* removal called the microbial toolbox; and updated analytical methods.

The GWR provides greater protection from pathogens to customers of PWSs that provide drinking water, in part or in whole, from sources of groundwater. Provisions of EPA's rule include raw water sampling at wells following any total coliform detection in a distribution system; required corrective action if fecal indicators are detected in a well; newly defined violations for the presence of fecal contaminants in raw water; and updated analytical methods.

TCEQ adopted requirements of the federal PNR in 2002, but three provisions remain to be added to our rule language. First, the rules require all public water systems that must issue public notice to certify in writing that the notice has been sent. Second, the rules change the amount of time in which a public water system must notify the TCEQ and its customers of an acute violation from one business day to 24 hours. Third, the rules ensure appropriate enforcement and tracking of public notice violations by including a reference to public notice violations under each constituent's compliance determination subsection.

The commission also proposes changes to ensure consistency of the state rules with the existing federal Total Coliforms (Including Fecal Coliforms and E. Coli) rule (TCR) and Disinfectants and Disinfection Byproducts rule (DBP1).

Additionally, the proposed rules reflect changes to the Texas Health and Safety Code (THSC), §341.033(i), made during the 79th Regular Legislative Session, regarding homeland security. Finally, the commission proposes to move the definition of "process control duties" from 30 Texas Administrative Code (TAC), §30.387, to this chapter.

Throughout the preamble the commission notes that the amendments that it is making are being proposed to make its rules consistent with the federal rules. When the commission uses the words "consistent with" in the preamble they mean the following: Where the EPA provided flexibility for the state to implement the federal rules the commission is proposing rules that provide standards consistent with the federal directives and that fit with existing state rules. Where EPA did not provide flexibility

to the states, the commission has incorporated the federal rule requirements into Chapter 290 but changed the language, without changing the regulatory requirements, to fit the state rules.

SECTION BY SECTION DISCUSSION

In addition to implementation of the federal laws discussed previously, the commission proposes administrative changes throughout the proposed rule to reflect the agency's current practices and to conform with *Texas Register* and agency guidelines. These changes include updating references to the TCEQ's predecessor agencies, updating cross-references, deleting effective dates that have already passed, and correcting typographical, spelling, and grammatical errors.

Subchapter D: Rules and Regulations for Public Water Systems

Subchapter D contains requirements for the physical facilities associated with public water systems. TCEQ must review and approve plans for facilities under EPA's special primacy conditions of 40 CFR §142.

Section 290.38, Definitions, contains definitions related to the design, pressure, flow, and treatment requirements that are contained in Subchapter D.

The commission proposes to amend §290.38 to add definitions found in LT2 and renumber the current definitions to maintain alphabetical order.

Specifically, the commission proposes to amend §290.38 to add definitions for the following terms: bag filter; cartridge filter; filtrate; and membrane filtration to incorporate definitions in the federal LT2 in 40 Code of Federal Regulations (CFR) §141.2.

The commission also proposes to amend §290.38 to add definitions for the following terms: challenge test; direct integrity test; indirect integrity monitoring; log removal value (LRV); membrane $LRV_{C\text{-}Test}$; membrane module; membrane sensitivity; membrane unit; quality control release value (QCRV); resolution; and sensitivity. The term "log removal" is a term of art that describes the percent removal of a constituent: 1-log removal equals 90% removal; 2-log removal equals 99% removal; and so forth. These definitions are based on definitions in the federal LT2 in 40 CFR §141.719 and Glossary EPA 815-R-06-009, the EPA Membrane Filtration Guidance Manual.

The commission also proposes to amend §290.38 to add the definitions of "chemical disinfectant" and "reactor validation testing" to incorporate definitions in the federal LT2 in 40 CFR §141.720 and the EPA 815-R-06-007, EPA Ultraviolet Disinfection Guidance Manual Glossary, and to amend the definition of "disinfectant" to differentiate this definition from the definition of "chemical disinfectant."

The commission proposes to move the definition for "innovative/alternate treatment" from §290.42(g) to §290.38 for consistency with the organizational principle that definitions be grouped in this section. This definition is also proposed to be amended for consistency with the microbial toolbox options for meeting *Cryptosporidium* treatment requirements in the federal LT2 in 40 CFR §141.715.

The commission proposes to move the definition of "process control duties" from §30.387(5) to §290.38 because the definition applies to allowable activities at public water systems, not to individuals who are licensed water operators. Chapter 30 contains requirements for becoming licensed as a public water system operator, as contrasted with Chapter 290, Subchapter F, which contains the requirements related to what types of operators a public water system must hire, and what duties those personnel may perform. The rule language of Chapter 30 related to water operators is under revision in the Occupational Licensing rule package, with the definition of "process control duties" proposed to be deleted and moved to Chapter 290. The language is proposed to be deleted from those rules based on an interoffice agreement that it is better placed in Chapter 290. The docket number for the Occupational Licensing rule package is 2006-1699-RUL and the rule project number is 2006-041-030-CE. The Occupational Licensing rule package is scheduled to go to agenda in September 2007 for adoption.

Section 290.39, General Provisions, describes how public water systems must submit plans or exception requests.

The commission proposes to add new §290.39(j)(1)(E) to specifically state the requirements of the federal LT2 in 40 CFR §141.719(b)(2)(viii) that describes how the executive director will determine the ability of modified membrane modules to inactivate microorganisms.

The commission proposes to add new §290.39(l)(4) to specifically state the requirements of the federal LT2 in 40 CFR §141.721(f) that the executive director be able to establish requirements for systems that have been issued an exception.

Section 290.41, Water Sources, contains the requirements for sources of water that are used as drinking water, for example, location and construction requirements for wells or surface water intake structures.

The commission proposes to amend §290.41(c)(3)(C) to reference the most current version of the American Water Works Association (AWWA) Standard for Water Wells and the most current standard's appendices.

The commission proposes to add new §290.41(d)(5) to incorporate 40 CFR §141.710(f) which requires systems with new springs or similar source to perform microbiological source water quality testing to determine the level of treatment required under LT2.

The commission proposes to amend §290.41(e)(1)(F) to include the proper spelling of the word *Escherichia* and the proper italicization of the words *coli*, *Giardia* and *Cryptosporidium*.

The commission proposes to add new §290.41(e)(1)(G) to incorporate 40 CFR §141.710(f) requiring systems with new surface water intakes, groundwater sources under the direct influence of surface water, and bank filtration wells to perform microbiological source water quality testing to determine the level of treatment, known as Bin Classification, required under LT2.

Section 290.42, Water Treatment, covers design and construction requirements related to drinking water treatment. It also provides the conditions under which a treatment process can be considered acceptable to meet the health-based standards of Subchapter F.

The commission proposes to amend §290.42(a)(2) by changing the term "underground water" to "groundwater" to be consistent with the use of the term "groundwater" throughout the subchapter.

The commission proposes to add new §290.42(b)(8) to incorporate the requirements of the federal GWR in 40 CFR §141.403(a)(6)(iv) that the executive director may require viral treatment on groundwater systems based on raw water sampling results showing the presence of fecal indicator organisms.

The commission proposes to amend §290.42(c)(1) to incorporate the requirements of the federal LT2 in 40 CFR §141.711(a) that systems using spring or other water sources with raw water monitoring results showing the presence of fecal indicators may be required to design treatment systems to achieve higher levels of *Cryptosporidium* treatment.

The commission proposes to amend §290.42(c)(6) to eliminate the date because the effective date of the regulation change has passed.

The commission proposes to amend §290.42(d)(1) to incorporate the requirements of the federal LT2 in 40 CFR §141.711(a) that systems using surface water sources with raw water monitoring results showing elevated levels of *Cryptosporidium* will be required to design treatment systems to achieve higher levels of *Cryptosporidium* treatment.

The commission proposes to amend §290.42(d)(3) and §290.42(d)(11)(E)(ii) to eliminate the dates because the effective dates of the regulation changes have passed.

The commission proposes to amend §290.42(g) to include the review and design requirements of bag and cartridge filtration, membrane filtration, and ultraviolet (UV) disinfection as specified in 40 CFR §141.119 and 40 CFR §141.120. Currently, the only innovative treatment with specific requirements is package treatment. Bag and cartridge filtration, membrane filtration, and ultraviolet (UV) disinfection are alternate treatment techniques included in the LT2 "microbial tool box" which are identified as the most likely to be used by Texas systems to meet the new LT2 requirements. The addition of the other innovative treatments with specific design requirements under the federal LT2 from EPA creates the need for new, separate paragraphs.

Specifically, the commission proposes to amend §290.42(g) by moving the definition of "innovative/alternate treatment" systems from the text of this subsection to §290.38 for consistency with the organizational principle that groups all definitions related to this subchapter in §290.38.

The commission proposes to amend §290.42(g) to incorporate the requirement that the executive director have the ability to require and review pilot protocols prior to pilot studies. The amendment is consistent with existing rules and new federal law. The existing requirements of §290.39(l) and the new requirements of the federal LT2 in 40 CFR §141.119 and 40 CFR §141.120 include provisions for challenge studies and validation studies. Existing §290.121 also requires that all compliance samples have a monitoring plan approved by the executive director.

The commission proposes to add new §290.42(g)(1) to contain the sentence in existing §290.42(g) regarding the design requirements for package-type treatment systems.

The commission proposes to add new §290.42(g)(2) to incorporate the requirements of the federal LT2 in 40 CFR §141.719(a) that bag and cartridge filtration systems can receive microbiological treatment credit if specified criteria are met.

The commission proposes to add new §290.42(g)(2)(A) to incorporate the criteria of 40 CFR §141.719(a) that bag and cartridge filtration systems can only receive microbiological treatment credit if the entire plant flow is treated by the filters.

The commission proposes to add new §290.42(g)(2)(B) to incorporate the criteria of 40 CFR §141.719(a) that bag and cartridge filtration systems can only receive microbiological treatment credit if approved by the executive director based on challenge testing that must be conducted in accordance with criteria established by EPA and the executive director.

The commission proposes to add new §290.42(g)(2)(B)(i) to incorporate the criteria of 40 CFR §141.719(a)(1) that bag and cartridge filtration systems must apply a factor of safety to the log removal credit determined from challenge testing.

The commission proposes to add new §290.42(g)(2)(B)(ii) to incorporate the criteria of 40 CFR §141.719(a)(2) that bag and cartridge filtration systems can only receive microbiological treatment credit if the challenge testing is performed on bag or cartridge filtration devices that are identical to the filtration devices that will be used by the public water system.

The commission proposes to add new §290.42(g)(2)(B)(iii) to incorporate the criteria of 40 CFR §141.719(a)(2) that bag and cartridge filtration systems can only receive microbiological treatment credit if the challenge testing is performed on bag or cartridge filtration devices that are arranged in an identical configuration to the filtration devices that will be used by the public water system.

The commission proposes to add new §290.42(g)(2)(B)(iv) to incorporate the criteria of 40 CFR §141.719(a)(1) that bag and cartridge filtration systems can receive microbiological treatment credit based on challenge testing performed before January 5, 2006 if the testing met the EPA criteria, is submitted by the system and is approved by the executive director.

The commission proposes to add new §290.42(g)(2)(B)(v) to incorporate the criteria of 40 CFR §141.719(a)(10) that bag and cartridge filtration systems can only receive microbiological treatment credit if the bag or cartridge filtration devices used in the challenge study have not been modified in a manner that could change the removal efficiency of the filter and to provide that if the bag or cartridge filtration device has been modified in this manner, a new challenge study must be conducted.

The commission proposes to add new §290.42(g)(2)(C) to incorporate the requirement of the federal LT2 in 40 CFR §141.719(a) that bag and cartridge filtration systems can only receive microbiological treatment credit if the membrane systems have been challenge tested, have the ability for direct and indirect integrity testing, and are designed to meet the other requirements of this section.

The commission proposes to add new §290.42(g)(3) to incorporate the requirements of 40 CFR §141.719(b) describing the conditions under which membrane filtration systems can receive microbiological treatment credit under LT2.

The commission proposes to add new §290.42(g)(3)(A) to incorporate the criteria of the federal LT2 in 40 CFR §141.719(b)(2) that membrane filtration systems can only receive microbiological treatment credit if approved by the executive director based on challenge testing that must be conducted in accordance with criteria established by EPA and the executive director.

The commission proposes to add new §290.42(g)(3)(A)(i) to incorporate the criteria of 40 CFR §141.719(b)(2)(v), (b)(2)(vi) and (b)(2)(vii) that membrane systems can only receive microbiological treatment credit if, before stating the challenge tests, the system submits and receives executive director approval for the challenge testing protocol. That protocol must include the plan for testing the membranes and for calculating how well the membranes remove microbes.

The commission proposes to add new §290.42(g)(3)(A)(ii) to incorporate the criteria of 40 CFR §141.719(b)(2)(i) that membrane systems can only receive microbiological treatment credit if the challenge testing is performed on membrane filtration devices that are identical to the filtration devices that will be used by the public water system. If smaller-scale membrane devices are used in the challenge testing, then they must be identical in material and similar in construction to the filtration devices that will be used by the public water system.

The commission proposes to add new §290.42(g)(3)(A)(iii) to incorporate the criteria of 40 CFR §141.719(b)(2) that membrane filtration systems can receive microbiological treatment credit based on challenge testing performed before January 5, 2006, if the testing met the EPA criteria, is submitted by the system and is approved by the executive director.

The commission proposes to add new §290.42(g)(3)(A)(iv) to incorporate the criteria of 40 CFR §141.719(b)(2)(viii) that membranes can only receive microbiological treatment credit if the membrane devices used in the challenge study have not been modified in a manner that could change the removal efficiency of the filter, or the quality control release value. If the bag or cartridge filtration device has been modified in this manner, a new challenge study must be conducted.

The commission proposes to add new §290.42(g)(3)(B) to incorporate the requirement of the federal LT2 in 40 CFR §141.719(b)(3) that membrane filtration system can only receive microbiological treatment credit if the membrane systems is designed to conduct and record the results of direct integrity tests demonstrating a removal efficiency equal to or greater than the removal credit awarded by the executive director.

The commission proposes to add new §290.42(g)(3)(B)(i) to incorporate the criteria of 40 CFR §141.719(b)(3)(i), that membrane systems be designed to allow direct integrity testing of each membrane unit.

The commission proposes to add new §290.42(g)(3)(B)(ii) to incorporate the criteria of 40 CFR §141.719(b)(3)(ii), that membrane systems be designed to allow direct integrity testing that has a resolution of 3 micrometers or less.

The commission proposes to add new §290.42(g)(3)(B)(iii) to incorporate the criteria of 40 CFR §141.719(b)(3)(iii), that membrane systems be designed to allow direct integrity testing that has a sensitivity to verify log removal credit that meets EPA criteria.

The commission proposes to add new §290.42(g)(3)(B)(iv) to incorporate the ability of the state described in 40 CFR §141.719(b)(3)(iv) to approve less frequent direct integrity testing.

The commission proposes to add new §290.42(g)(3)(C) to incorporate the requirement of 40 CFR §141.719(b)(4) and (b)(4)(i) that membrane filtration systems can only receive microbiological treatment credit if the membrane system is designed to conduct and record the results of continuous indirect integrity tests, describes the equipment required to perform these tests, and restates the ability of the state to allow alternative monitoring technology as contained in existing §290.39(1).

The commission proposes to add new §290.42(g)(3)(D), (g)(3)(D)(i) and (g)(3)(D)(ii) to incorporate the requirement of 40 CFR §141.719(b)(1) that the microbiological treatment credit that membrane filtration systems can receive is no greater than the lower of the credits received through challenge testing or direct integrity testing.

The commission proposes to add new §290.42(g)(3)(E) to incorporate the requirement of 40 CFR §141.719(b) that membrane filtration systems can only receive microbiological treatment credit if the membrane systems have been challenge tested, have the ability for direct and indirect integrity testing, and are designed to meet the other requirements of this section.

The commission proposes to add new §290.42(g)(3)(F) to incorporate the requirement of EPA 815-R-06-009, EPA Membrane Filtration Guidance Manual, that membrane filtration systems can only receive microbiological treatment credit if the membrane systems are designed with the described cross connection control measures.

The commission proposes to add new §290.42(g)(4) to incorporate the requirements of 40 CFR §141.73(d) describing how bag, cartridge and membrane filters can receive microbial credit before the compliance date of LT2.

The commission proposes to add new §290.42(g)(5) to incorporate the requirements of the federal LT2 in 40 CFR §141.720(d)(1) that UV light reactors may receive microbiological treatment credit.

The commission proposes to add new §290.42(g)(5)(A) to incorporate the criteria of 40 CFR §141.720(d)(1) that UV light reactors can only receive microbiological treatment credit if the UV light reactors are located after the water has been treated with filtration to remove turbidity that would interfere with disinfection. Turbidity is a measurement of the cloudiness of water, used as a surrogate measurement indicating the potential presence of pathogens. Water higher in turbidity is less safe than water with low turbidity.

The commission proposes to add new §290.42(g)(5)(B) to incorporate the criteria of 40 CFR §141.720(d)(2) that UV light reactors can only receive microbiological treatment credit if approved by the executive director based on validation testing that must be conducted in accordance with criteria established by EPA and the executive director.

The commission proposes to add new §290.42(g)(5)(B)(i) to incorporate the criteria of 40 CFR §141.720(d)(2)(i) that UV light reactors can only receive microbiological treatment credit if the validation testing addresses the impact of UV absorbance, lamp fouling, lamp aging, on-line sensor uncertainty, hydraulic turbulence factors, effect of critical failures, piping configuration, lamp and sensor locations, and any other data deemed necessary by the executive director.

The commission proposes to add new §290.42(g)(5)(B)(ii) to incorporate the criteria of 40 CFR §141.720(d)(2)(ii) that UV light reactors can only receive microbiological treatment credit if the validation testing is performed on a UV light reactor that is essentially identical to the UV light reactor that will be used by the public water system and that the water used in the validation testing is essentially identical to the water used by the system.

The commission proposes to add new §290.42(g)(5)(C) to incorporate the requirement of the federal LT2 in 40 CFR §141.720(d)(3)(i) that a UV light reactor system can only receive microbiological treatment credit if it is designed to conduct and record parameters to determine if the reactors are operating within the validated conditions approved by the executive director.

Section 290.44, Water Distribution, contains the design requirements for drinking water distribution systems. The commission proposes to amend §290.44(h)(4)(A) to change the words "professional certification" to "license." All previously issued backflow prevention assembly tester certificates expired December 1, 2002. This certification was replaced by licensing in 30 TAC §30.51(c).

Section 290.45, Minimum Water System Capacity Requirements, contains the minimum water system capacity requirements. The commission proposes to amend §290.45(c)(1)(B)(ii) to correct the typographical error of gpm to gallons per unit.

The commission proposes to amend the figure, Table A, in §290.45(d)(1) to correct the units for capacity by adding the phrase "/Day."

Section 290.46, Minimum Acceptable Operating Practices for Public Drinking Water Systems, contains the minimum acceptable operating requirements for public water systems, for example, record retention periods.

The commission proposes to amend §290.46(e)(2)(C) to eliminate the date because the effective date of the regulation change has passed.

The commission proposes to amend §290.46(f)(3)(B)(iv) to change the title of §290.111 to be consistent with the name change proposed for that section.

The commission proposes to add new §290.46(f)(3)(B)(vii) to incorporate the requirement of the federal LT2 in 40 CFR §141.722(a) that raw surface water monitoring results be kept for three years after bin classification. Bin classification is the process under the federal LT2 whereby the executive director establishes the level of microbial inactivation that is required at individual water treatment plants treating surface water or groundwater under the direct influence of surface water.

The commission proposes to add new §290.46(f)(3)(B)(viii) to incorporate the requirement of the federal LT2 in 40 CFR §141.722(b) that public water systems retain records related to system notification to the executive director of treatment in lieu of monitoring for three years.

The commission proposes to add new §290.46(f)(3)(B)(ix) to incorporate the requirement of the federal LT2 in 40 CFR §141.722(c) that public water systems retain records of all surface water treatment monitoring that is used to determine log inactivation or removal for three years.

The commission proposes to add new §290.46(f)(3)(D)(iv) to incorporate the requirement of existing federal requirement 40 CFR §141.33(f) that all monitoring plans be kept for five years to follow the standard organization for record retention requirements, consistent with existing §290.121.

The commission proposes to add new §290.46(f)(3)(D)(v) to incorporate the requirement of the federal GWR in 40 CFR §141.405(b)(3) that all corrective action plans and schedules for groundwater systems be kept by the public water system for five years.

The commission proposes to add new §290.46(f)(3)(D)(vi) to incorporate the requirement of the federal GWR in 40 CFR §141.405(b)(3) that all documentation of the reason for an invalidated fecal indicator source sample be kept by the public water system for five years.

The commission proposes to add new §290.46(f)(3)(D)(vii) to incorporate the requirement of the federal GWR in 40 CFR §141.405(b)(4) that all notifications to wholesale systems due to coliform positive samples be kept by the public water system for five years.

The commission proposes to add new §290.46(f)(3)(D)(viii) to incorporate the requirement of existing 40 CFR §141.153 that all consumer confidence report compliance documentation be kept for five years, consistent with the organization of record retention requirements. Record retention requirements for reports required by the drinking water standards of Subchapter F are contained in §290.46(f) as part of the minimum operating requirements for public water systems.

The commission proposes to add new §290.46(f)(3)(E)(v) to incorporate the requirement of the federal DBP2 in 40 CFR §141.601(c)(4) that Initial Distribution System Evaluation (IDSE) reports be kept by the public water system for ten years.

The commission proposes to add new §290.46(f)(3)(E)(vi) to incorporate the requirement of the federal DBP2 in 40 CFR §141.601(c)(4) that any notification of modifications to an IDSE report be kept by the public water system for ten years.

The commission proposes to add new §290.46(f)(3)(E)(vii) to incorporate the requirement of the federal DBP2 in 40 CFR §141.601(b)(4) that 40/30 certifications be kept by the public water system for ten years.

The commission proposes to add new §290.46(f)(3)(E)(viii) to incorporate the requirement of the federal GWR in 40 CFR §141.405(b)(1) that documentation of corrective actions be kept by the public water system for ten years.

The commission proposes to amend §290.46(g) to spell out the acronym for American Water Works Association at its first usage.

The commission proposes to amend §290.46(j) by change the name of §290.47(d) from "Customer Service Inspection Certificate" to "Appendices" to reflect the existing name of §290.47. Additionally, the commission proposes to include the acronym for the Texas State Board of Plumbing Examiners in §290.46(j)(1)(A).

The commission proposes to amend §290.46(j)(1)(B) to change the words "certification or endorsement" to "license." All previously issued customer service inspection endorsements expired. This endorsement was replaced by a license in existing §30.81(c).

The commission proposes to amend §290.46(s) to incorporate requirements of the federal LT2 in 40 CFR §141.719(b) and 40 CFR §141.720(d) to include testing requirements for membrane systems and UV light.

The commission proposes to amend §290.46(s)(2)(C) to differentiate between the existing requirements for chemical disinfectants and the new requirements of 40 CFR §141.720(d) for the use of UV light.

The commission proposes to add new §290.46(s)(2)(D) to include the requirements of 40 CFR §141.720(d)(3)(i) that UV light analyzers be properly calibrated.

The commission proposes to add new §290.46(s)(2)(D)(i) to include the requirements of 40 CFR §141.720(d)(3)(i) that duty UV sensors be verified with reference UV sensors monthly.

The commission proposes to add new §290.46(s)(2)(D)(ii) to include the requirements of 40 CFR §141.720(d)(3)(i) that reference UV sensors be calibrated yearly or sooner.

The commission proposes to add new §290.46(s)(2)(D)(iii) to include the requirements of 40 CFR §141.720(d)(3)(i) that UV transmittance sensors be calibrated weekly.

The commission proposes to add new §290.46(s)(2)(E) to include the requirements of the federal LT2 in 40 CFR §141.719 that systems must verify performance of direct integrity testing and equipment as approved by the executive director.

The commission proposes to add new §290.46(w) to incorporate the requirements of THSC §341.003(i) for systems to have a plan to notify the commission in case of an event that negatively impacts the production and delivery of safe and adequate drinking water. Paragraphs (1) through (5) describe emergency events that trigger notification.

Section 290.47, Appendices, contains the flow chart for systems to use in determining whether a boil water notice is needed when pressure in the distribution system drops.

The commission proposes to amend the figure, Boil Water Notification, in §290.47(e) to update the TCEQ's phone number.

The commission proposes to amend the figure, Service Agreement, in §290.47(f) to replace the term "calibration date" with the term "Date Tested for Accuracy" as stated in §290.44(h)(4)(B) and to add a line for the certified tester to sign the form as required by §290.44(h)(4)(C).

The commission proposes to amend §290.47(h) to replace "TNRCC" with "TCEQ" in the graphic.

Subchapter F: Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements

Subchapter F contains the maximum contaminant levels (MCLs), treatment techniques, sampling frequencies and locations, and reporting requirements for drinking water quality as provided by the EPA under the Safe Drinking Water Act (SDWA) and its amendments.

Section 290.101, Purpose, states the purpose of the drinking water standards and other requirements contained in Subchapter F. The commission proposes to amend §290.101 to correct typographical and syntax errors. The periods after each letter in the acronym for United States Code are proposed to be removed, the term "*et seq.*" is proposed to be italicized and the period after "*et seq*" is proposed to be removed, and the acronym "EPA" is proposed to be replaced with the full name of the United States Environmental Protection Agency.

Section 290.102, General Applicability, describes the conditions under which the drinking water standards apply to a water system. The commission proposes to amend §290.102 to correct typographical and syntax errors. The commission proposes to amend the catchline of §290.102(a) to eliminate the initial capital letter on the word "applicability." The commission proposes to correct the reference to the Safe Drinking Water Act in §290.102(b) by replacing the existing word "Safety" with the word "Safe," and to insert the full name of the Code of Federal Regulations before referring to the acronym "CFR." The commission proposes to amend §290.102(d) by adding the catchline "Motion to overturn" for consistency with Agency syntax protocols. The commission proposes to amend the catchlines in §290.102(e) and (f) to eliminate the initial capital letters on words that are not first in the catchline for consistency with Agency syntax protocols.

Section 290.103, Definitions, contains definitions related to the drinking water standards and other requirements that are contained in Subchapter D.

The commission proposes to amend §290.103 to add definitions resulting from the new federal GWR, LT2, and DBP2, to correct typographical and syntax errors, and to renumber existing definitions to accommodate the new definitions and to maintain alphabetical order. The definitions of §290.103 are for terms used throughout Subchapter F.

The commission proposes to add a definition of the term "assessment source monitoring" which is used in proposed §290.109 and §290.116 as new §290.103(1) consistent with the definition in the federal GWR in 40 CFR §141.402(b) and 30 TAC §290.109(c)(4)(E).

The commission proposes to add a definition given in the federal DBP2 and LT2 in 40 CFR §141.2 of the concept of a combined distribution system (CDS) group of systems as new §290.103(2) as, "A CDS is the interconnected distribution system consisting of the distribution systems of wholesale systems and of the consecutive systems that receive finished water." The commission proposes to add new §290.103(2)(A) to state that a CDS may be modified to eliminate minor interconnections as provided in 40 CFR §141.620(c)(8). The commission proposes new §290.103(2)(B) to provide that the CDS determination for compliance with DBP2 and LT2 can be different for a single system. The LT2 method for determining CDS based on treatment plants is proposed to be added as new §290.103(2)(B)(i) consistent with the federal LT2 in 40 CFR §141.701. The commission proposes to add the DBP2 method for basing CDS on retail population served as new §290.103(2)(B)(ii) consistent with the federal DBP2 in 40 CFR §141.600(b).

The commission proposes to add the definition from the federal DBP2 in 40 CFR §141.2 of "consecutive system" to describe purchased water systems as new §290.103(6).

The commission to add a reference to *Cryptosporidium* and proposes to italicize the term "*Giardia lamblia*" within the definition of "disinfection profile" in existing §290.103(4), renumbered to §290.103(7).

The commission proposes to define "dual sample set" as a pair of trihalomethane and haloacetic acid samples in accordance with the federal DBP2 in 40 CFR §141.2 as new §290.103(10).

The commission proposes to add the definition of "fecal indicators" from the federal GWR in 40 CFR §141.402(c)(2) as new §290.103(15).

The commission proposes to add the definition of "finished water" as new §290.103(18) consistent with the definition of "uncovered finished water reservoir" in the federal LT2 in 40 CFR §141.2.

The commission proposes to define the corrective action required in response to confirmed fecal contamination of groundwater as "groundwater corrective action" in new §290.103(19), consistent with the requirements of new §290.116 and the federal GWR in 40 CFR §141.403.

Likewise, the plan required for a system that must take corrective action is proposed to be defined as "groundwater corrective action plan" in new §290.103(20) consistent with the federal GWR in 40 CFR §141.403(a)(4) and new §290.116(b).

The commission proposes to add a definition of "groundwater system" consistent with the federal GWR in §141.400(b) as new §290.103(21).

The commission proposes to define "hydrogeologic sensitivity assessments" for determination of groundwater sensitivity in new §290.103(24) as provided in the federal GWR in 40 CFR §141.400(c)(5).

The commission proposes to define the new compliance method of taking a locational running annual average (LRAA) from the federal DBP2 in 40 CFR §141.2 as "locational running annual average" in §290.103(25).

The commission proposes to define the term "operational evaluation level (OEL)" as described in the federal DBP2 in 40 CFR §141.626 in new §290.103(29).

The commission proposes to add a definition for the term "raw water" as new §290.103(30) for consistency in designating raw water monitoring for surface water and groundwater under the new federal GWR and LT2.

The commission proposes new §290.103(31) to contain the definition of the term "raw groundwater source sampling" consistent with the federal GWR in 40 CFR §141.402 and existing §290.109(c)(4).

The commission proposes to define the term "triggered source water monitoring" in new §290.103(35) as described in the federal GWR in 40 CFR §141.402(a)(1) and existing §290.109(c)(4)(A).

The commission proposes new §290.103(37) to contain the definition of the term "wholesale system" from the federal DBP2 in 40 CFR §141.2.

Section 290.104, Summary of Maximum Contaminant Levels, Maximum Residual Disinfection Levels, Treatment Techniques, and Action Levels, contains a summary of MCLs, maximum residual disinfectant levels, treatment techniques, and action levels for drinking water. This summary consolidates the limits that are spread through the individual sections relating to specific contaminants.

The commission proposes to amend §290.104 to add references to requirements added elsewhere as part of the incorporation of new federal requirements, remove references to effective dates that have passed, to correct internal references, and to correct typographical and syntax errors.

The commission proposes to amend the table in §290.104(b) to remove references to the existing arsenic MCL effective date of January 23, 2006, because that date has passed.

The commission proposes to amend the internal reference in §290.104(g) because the title of §290.111 is proposed to be changed to "Surface Water Treatment" as a result of LT2. In §290.104(g)(1) the commission proposes to remove the initial capital letters from the term "Nephelometric Turbidity Unit." The commission proposes to reword §290.104(g)(2) to conform to the new contents of §290.111, which are proposed to be changed as a result of the incorporation of LT2.

Section 290.104(i) is proposed to be amended to amend the internal reference to §290.113, and to add a reference to §290.115. Both changes result from the proposed revisions resulting from incorporation of DBP2.

Section 290.106, Inorganic Contaminants, contains the health-based standards, sampling requirements, reporting requirements, and public notification requirements for inorganic contaminants that may be found in drinking water sources.

The commission proposes to amend §290.106 to include elements related to the PNR, to remove references to effective dates that have passed, to correct citations, and to correct typographical and syntax errors.

The commission proposes to delete §290.106(a)(4) to remove references to the existing arsenic MCL effective date of January 23, 2006, because that date has passed and the commission proposes to amend the table in §290.106(b) for the same reason.

New §290.106(f)(8) is proposed to be added to explicitly identify the type of violation resulting from failure to perform a required public notification. The change is necessary for consistency with PNR requirements specified in publication EPA 816-R-01-010, Final State Implementation Guidance for the Public Notification (PN) Rule, to accommodate internal agency procedures for identifying violations by specific citations in the Consolidated Compliance and Enforcement Data System (CCEDS), and thus to ensure delivery of public notice violation data to EPA as part of the TCEQ's primacy requirements.

The commission proposes to amend §290.106(g)(1) to conform to the requirement under the federal PNR of 40 CFR §141.602 requiring a system to notify the public of a nitrate violation within 24 hours, replacing the existing reference allowing this notification to occur on the next business day.

Section 290.107, Organic Contaminants, contains the health-based standards, sampling requirements, reporting requirements, and public notification requirements for synthetic and naturally occurring organic contaminants that may be found in drinking water sources.

The commission proposes to amend §290.107 to eliminate a reference to a past compliance date, to include elements of the PNR, to correct references, and to correct typographical and syntax errors.

The commission proposes to delete the catchline in §290.107(c)(2)(A)(i) to conform to agency syntax protocols.

The commission proposes to amend §290.107(c)(2)(C)(ii) to remove the December 31, 1992 effective date, because all public water systems have completed initial compliance monitoring since that time.

The commission proposes to amend §290.107(e) to correct the agency's address to conform to United States Postal Service requirements.

The commission proposes to add new §290.107(f)(3) to explicitly identify the type of violation resulting from failure to perform a required public notification for consistency with EPA's Public Notification Rule requirements specified in publication EPA 816-R-01-010, Final State Implementation Guidance for the Public Notification (PN) Rule.

Section 290.108, Radionuclides Other than Radon, contains the health-based standards, sampling requirements, reporting requirements, and public notification requirements for radiochemicals (other than radon) that may be found in drinking water sources.

The commission proposes to amend §290.108 to eliminate compliance dates that have passed, to include elements of the PNR, and to correct typographical and syntax errors.

The commission proposes to amend §290.108(a) to remove the reference to the December 8, 2003, effective date for the uranium MCL because that date has passed, and the reference to the December 21, 2007, effective date to complete initial uranium monitoring is because all systems in Texas have done initial monitoring.

The commission proposes to remove the uranium MCL effective date from §290.108(b)(1)(C). References to moot uranium monitoring effective dates are proposed to be removed from §290.108(c)(1)(A)(iii), §290.108(c)(1)(A)(iii)(I), §290.108(c)(1)(A)(iii)(II) and §290.108(c)(1)(A)(iii)(III) because all required monitoring has been accomplished.

The commission proposes to amend the TCEQ's mailing address in §290.108(e) to conform with United States Postal Service requirements.

The commission proposes to add new §290.108(f)(5) to explicitly identify the type of violation resulting from failure to perform a required public notification for consistency with PNR requirements specified in publication EPA 816-R-01-010, Final State Implementation Guidance for the Public Notification Rule (PN) Rule.

Existing §290.109, Microbial Contaminants, contains the health-based standards, sampling requirements, reporting requirements, and public notification requirements for microbial contaminants that may be found in drinking water. The existing section contains requirements from the federal TCR and is proposed to be extensively amended to incorporate new elements of the federal GWR, because the GWR is intended to address microbial contamination of raw water sources. The commission proposes to change the wording throughout §290.109 to make sampling references consistent.

The commission proposes to amend §290.109(b) relating to MCLs for microbial contaminants to include the GWR treatment technique requirements under 40 CFR §141.403 which establish a standard for fecal microbial indicators for raw groundwater sources.

The commission proposes to add new §290.109(b)(1) to contain the existing MCL definitions for microbial contaminants in the distribution system in existing §290.109(b).

The commission proposes to add new §290.109(b)(1)(A) to incorporate existing §290.109(b)(1). The commission also proposes to add the words "routine distribution" to specify that the samples this paragraph applies to are those routinely collected from the distribution system and proposes to correct the MCL language as being achieved when more than 5% of samples collected in a month are coliform positive for a system that collects at least 40 routine distribution coliform samples, consistent with the federal Total Coliform Rule in 40 CFR §141.21.

The commission proposes to add new §290.109(b)(1)(B) to incorporate existing §290.109(b)(2). The commission also proposes to add the words "routine distribution" to identify the samples referred to in these subparagraphs as those routinely collected from the distribution system. Additionally, the commission proposes that the MCL language be made consistent with the federal Total Coliform Rule in 40 CFR §141.21 as being achieved when more than 5% of samples collected in a month are coliform positive for a system that collects fewer than 40 routine distribution coliform samples.

The commission proposes to add new §290.109(b)(1)(C) to identify the distribution coliform acute MCL which was not previously defined in §290.109(b). This change is proposed to maintain consistency with the organization other of sections in Subchapter F, in which all MCLs are identified specifically in a single subsection.

The commission proposes to add new §290.109(b)(2) to contain the non-detection standards for fecal indicators in raw groundwater sources as established in the GWR treatment technique requirements under 40 CFR §141.403.

The commission proposes to amend §290.109(c) to include monitoring requirements of other fecal indicator organisms identified in the federal GWR in 40 CFR §141.402(c)(2). In addition, the commission proposes to use the term *E. coli* rather than *Escherichia coli* for consistency with the federal GWR in 40 CFR §141.402.

The commission proposes to amend §290.109(c)(1)(A) to identify the routine samples referred to in this subparagraph specifically as distribution coliform samples rather than as any other type of bacteriological samples. Because the new federal rule initiates requirements for viral indicator sampling at raw sample sites as well as bacterial sampling at distribution sample sites, it is now necessary to make this distinction. The commission also proposes to add the word "quality" to clarify the aspects of the water that may impact sample site selection. In addition, the commission proposes to indicate that other sampling sites may be used only if adjacent to active service connections rather than potentially implying that any active or inactive service connections could be used.

The commission proposes to amend §290.109(c)(1)(B), (c)(2), (c)(2)(A) through (c)(2)(D), (c)(2)(F), (c)(3), (c)(3)(A), (c)(3)(A)(i), (c)(3)(A)(ii), and (c)(3)(C) to specify and clarify that the sampling indicated in this subparagraph refers to distribution coliform samples rather than other microbial contaminants. The commission proposes to change the wording throughout §290.109 to make sampling references consistent. Because the new federal rule requirements initiate requirements for microbiological contaminants other than coliform bacteria, it is now necessary to make this distinction.

The commission proposes to add new §290.109(c)(4) to incorporate the groundwater source monitoring requirements of the federal GWR in 40 CFR §141.402.

In new §290.109(c)(4)(A), the commission proposes to approve the use of *E. coli* as a fecal indicator for raw groundwater source monitoring required under the federal GWR in 40 CFR §141.402. In §290.109(c)(4)(A)(i) and (c)(4)(A)(ii), the commission proposes to incorporate the requirements of 40 CFR §141.402(a)(1) which requires public water systems to conduct triggered source monitoring if they do not provide at least 4-log treatment of viruses and are notified of a distribution coliform positive. The term "4-log" treatment means that the technology used has the ability to remove at least 99.99% of viruses present in the raw source water.

The commission proposes to add new §290.109(c)(4)(B) to incorporate the raw source sampling requirements of the federal GWR in 40 CFR §141.402(a)(2). The new subparagraph requires drinking water systems using groundwater sources to take source samples within 24 hours of being notified of a distribution coliform sample positive. In new §290.109(c)(4)(B)(i) and (c)(4)(B)(ii), the commission proposes to allow the extension of the 24-hour period and allows systems to sample a representative subset of groundwater sources if approved by the executive director. In new §290.109(c)(4)(B)(iii), the commission proposes

to incorporate the provisions under 40 CFR §141.402(a)(2)(iii) which allow systems serving fewer than 1,000 people to use the required raw source sample as one of the four required distribution repeat samples.

The commission proposes to add new §290.109(c)(4)(C) to incorporate the requirements under the federal GWR in 40 CFR §141.402(a)(4) that a system which purchases water from a groundwater system must notify the provider within 24 hours of a positive coliform distribution sample. In new §290.109(c)(4)(C)(i) and (c)(4)(C)(ii), the commission proposes to incorporate the requirements of 40 CFR §141.402(a)(4)(i) and (a)(4)(ii) which require wholesale systems to conduct raw source monitoring with 24 hours of being notified of the receiving system's positive distribution sample. Additionally, the wholesaler must notify its receiving systems within 24 hours of being notified that a source sample was positive for a fecal indicator.

The commission proposes to add new §290.109(c)(4)(D) to incorporate the requirements under 40 CFR §141.402(a)(5) which allow the primacy agency to waive the triggered source monitoring requirements under circumstances identified in the federal GWR in 40 CFR §141.402(a)(5)(i) and (a)(5)(ii). The commission proposes to add new §290.109(c)(4)(D)(i) and (c)(4)(D)(ii) to allow this waiver based on distribution system deficiencies that caused the distribution coliform positive and the collection of an invalid distribution sample.

The commission proposes to add new §290.109(c)(4)(E) to incorporate 40 CFR §141.402(b) which allows primacy agencies to conduct assessment source monitoring on groundwater sources deemed to be susceptible to fecal contamination, prior to positive distribution coliform samples.

The commission proposes to amend §290.109(d) to contain the analytical invalidation requirements contained in existing §290.109(c)(4). This is consistent with the organizational principle that all analytical requirements for a contaminant are contained in a single subsection.

The commission proposes to add new §290.109(d)(1) to contain the sample invalidation text moved from existing §290.109(c)(4). In addition to moving that paragraph, the commission proposes to change §290.109(d)(1) to identify the term "sample" to specify "distribution coliform sample." This distinction is needed to differentiate the invalidation requirements for raw groundwater source samples found in the proposed §290.109(d)(2) from the existing invalidation requirements for distribution coliform samples.

The commission proposes new §290.109(d)(1)(A) through (d)(1)(E) to contain the requirements existing §290.109(c)(4)(A) through (c)(4)(E) that require written notification from laboratories when improper sample analysis occurred in order to document that the improper analysis caused the positive result and give the executive director the discretion to invalidate a sample.

The commission proposes to add new §290.109(d)(2) to address fecal indicator positive source sample invalidation as allowed by the federal GWR in 40 CFR §141.402(d).

The commission proposes to add new §290.109(d)(2)(A) to incorporate the public water systems requirements in the event of a laboratory invalidation of a fecal indicator positive source samples as required by 40 CFR §141.402(d).

The commission proposes to add new §290.109(d)(2)(B) to provide the criteria under which invalidation of a fecal indicator positive source sample will be allowed as contained in the federal GWR in 40 CFR §141.402(d).

The commission proposes to amend §290.109(e) to replace "Texas Natural Resource Conservation Commission" with "Texas Commission on Environmental Quality."

The commission proposes to amend §290.109(f)(1)(A) to identify the repeat sample referred to as those collected in the distribution system. In addition, the commission proposes to use the term *E. coli* rather than *Escherichia coli* for consistency with the federal GWR in 40 CFR §141.402.

The commission proposes to amend §290.109(f)(1)(B) to identify the repeat and routine sample as those collected in the distribution system. In addition, the commission proposes to use the term *E. coli* rather than *Escherichia coli* for consistency with CFR §141.402.

The commission proposes to amend §290.109(f)(2) to replace the term "bacteriological samples" with the term" routine distribution coliform samples." In addition, the commission proposes to use the term *E. coli* rather than *Escherichia coli* for consistency with 40 CFR §141.402. Because the new federal rule requirements initiate requirements for microbiological contaminants other than coliform bacteria, it is now necessary to make this distinction.

The commission proposes to amend §290.109(f)(3) to identify samples referred to as routine distribution coliform samples. Because the new federal rule requirements initiate requirements for microbiological contaminants other than coliform bacteria, it is now necessary to make this distinction. In addition, the commission proposes to use the term *E. coli* rather than *Escherichia coli* for consistency with 40 CFR §141.402.

The commission proposes to add a new §290.109(f)(4) to contain the non-detection standards for fecal indicators in raw groundwater sources as established in the GWR treatment technique requirements under 40 CFR §141.403.

The commission proposes to renumber existing §290.109(f)(4) to §290.109(f)(5) and further identify the coliform samples referred to in this paragraph as distribution coliform samples. Because the new federal rule requirements initiate requirements for microbiological contaminants other than coliform bacteria, it is now necessary to make this distinction.

The commission proposes to add new §290.109(f)(6) to specify that failure to collect the required number of raw source samples will result in a monitoring violation as defined under the federal GWR in 40 CFR §141.402(h).

The commission proposes to renumber existing §290.109(f)(5) to §290.109(f)(7) in order to retain the correct numbering sequence after inserting additional paragraphs resulting from the federal GWR.

The commission proposes to add new §290.109(f)(8) to specify that failure to issue public notice or certify that public notice has been performed will result in a public notice violation consistent with EPA 816-R-01-010, Final State Implementation Guidance for the Public Notification (PN) Rule.

The commission proposes to renumber existing §290.109(f)(6) to §290.109(f)(9) and to identify the routine and repeat samples referred to in this paragraph as distribution coliform samples. The new federal GWR initiates requirements for microbiological contaminants other than coliform bacteria, so it is now necessary to make this distinction.

The commission proposes to renumber existing §290.109(f)(7) to §290.109(f)(10) and to identify the samples referred to in this paragraph as distribution coliform samples. Because the new federal rule requirements initiate requirements for microbiological contaminants other than coliform bacteria, it is now necessary to make this distinction.

The commission proposes to renumber existing §290.109(f)(8) to §290.109(f)(11) in order to retain the correct numbering sequence after inserting additional paragraphs resulting from the federal GWR.

The commission proposes to amend §290.109(g)(1) to further identify the requirements as boil water notice requirements of Subchapter D and correct the incorrect internal reference from §290.46(s)(3) to §290.46(q).

The commission proposes to add new §290.109(g)(2) to require public notice of fecal indicator positive source samples in accordance with §290.122(a)(1)(F) of this title and the requirements of the federal GWR in 40 CFR §141.202(a)(8).

Existing §290.110, Disinfectant Residuals, contains the requirements for maintaining disinfectant residuals in drinking water distribution systems and in surface water treatment plants. This section is proposed to be extensively amended in response to the federal LT2, which adds complexity to the requirements for surface water treatment plants. In order to simplify and clarify the requirements, the existing requirements for surface water treatment plants are proposed to be moved to §290.111 with requirements from the federal LT2. Section 290.110 is therefore proposed to be amended to contain only the requirements for disinfectant residuals in drinking water distribution systems. The proposed amendments will also establish an alternate analytical method for chlorine dioxide which will allow public water systems to use this method should they so choose, allowing greater flexibility for the regulated community. Finally, the proposed amendment will specify that failure to issue public notice or certify that public notice has been performed will result in a public notice violation.

In §290.110(b), the commission proposes to delete a reference to treatment technique requirements that apply only to systems treating surface water or groundwater under the direct influence of surface water because all of the conditions for surface water treatment (and treatment of groundwater under the direct influence of surface water) are proposed to be moved to the new section containing all of the requirements for surface water treatment plants (and plants treating groundwater under the direct influence of surface water) in §290.111, relating to Surface Water Treatment. Throughout Chapter 290, and in the federal SDWA, the requirements for treatment of groundwater under the direct influence of surface water are identical to the requirements for treatment of surface water, except where specific differences are explicitly noted.

The commission proposes to amend §290.110(b)(1) by replacing the specific requirement with a general requirement that public water systems ensure that water is adequately disinfected before entering the distribution system. The commission proposes to move the specific treatment technique requirements currently contained in §290.110(b)(1) to §290.111(c).

The commission proposes to amend §290.110(b)(1)(A) to reference the section of the proposed rules that will contain the disinfection (pathogen inactivation) requirements for systems treating surface water or groundwater under the direct influence of surface water. The commission proposes to amend §290.110(b)(1)(B) to reference the proposed section that contains the analogous requirements for systems treating groundwater. The specific requirements currently contained in these two subparagraphs are proposed to be moved to §290.111(d)(1).

The commission proposes to delete §290.110(b)(5)(A) and (b)(5)(B), which are no longer needed because the effective date of the regulatory change has passed.

The commission proposes to move the requirements contained in existing §290.110(c)(1) to proposed new §290.111(d)(2). The commission proposes to move the requirements contained in existing §290.110(c)(1)(A) through (c)(1)(C) to proposed new §290.111(d)(2)(A) through (d)(2)(C), respectively. The commission proposes to renumber the remaining paragraphs in §290.110(c) accordingly.

The commission proposes to move the analytical requirements currently contained in §290.110(d)(1) and (d)(2) to §290.111(d)(4)(A) and (d)(4)(B), respectively. As a result, the remaining paragraphs in this subsection are proposed to be renumbered accordingly.

In addition to renumbering §290.110(d)(5) to §290.110(d)(3), the proposed amendment would also allow the use of additional analytical methods for chlorine dioxide described in 40 CFR §141.75. New §290.110(d)(3)(A) is proposed to contain the method in existing §290.110(d)(5).

The commission proposes amendments in §290.110(e) to allow the commission to comply with minimum federal requirements, update and correct references contained in existing provisions, and reduce the reporting requirements for transient, noncommunity systems that only treat groundwater or distribute treated water purchased from another public water system.

The commission proposes to amend §290.110(e)(1) to require public water systems with a chlorine dioxide maximum residual disinfection level (MRDL) violation to notify the executive director within 24 hours instead of by the end of the next business day. This proposed change is needed to assure compliance with the requirements of the federal PNR in 40 CFR §141.202(a)(5) and (b)(2).

The commission proposes to amend §290.110(e)(2) to eliminate a reference to an effective date which has already passed and identify the current reporting forms used by plants treating surface water and groundwater under the direct influence of surface water.

The commission proposes to amend §290.110(e)(4) by eliminating a reference to an effective date which has passed and by identifying the form number of the Disinfectant Level Quarterly Operating Report (DLQOR) that must be completed by plants that treat groundwater or distribute treated water purchased from another public water system. The commission also proposes to replace the word "submit" with the word "complete" because the commission is proposing to reduce the reporting requirements for transient noncommunity water systems. The commission proposes new §290.110(e)(4)(A) and (e)(4)(B) to retain the existing reporting requirement for community and nontransient noncommunity systems but only require transient noncommunity water systems to provide a copy of the DLQOR if one is requested by the executive director consistent with the applicability of existing 40 CFR §141.130(a)(1).

The commission proposes to amend §290.110(e)(5) to correct the errors in the mailing address of the TCEQ's Water Supply

Division for consistency with U S Postal Service standards and to replace "Texas Natural Resource Conservation Commission" with "Texas Commission on Environmental Quality."

The commission is proposing to amend §290.110(f). The proposed revisions to §290.110(f)(4) and (f)(5)(B) result from moving the provisions contained in existing §290.110(b)(1) and (c)(1) to §290.111(d)(1)(D) and from the renumbering proposed for the paragraphs in §290.110(c). The proposed change to §290.110(f)(5)(C) corrects a grammatical error. The commission proposes new §290.110(f)(10) to comply with directives received from the EPA and contained in their publication EPA 816-R-01-010, Final State Implementation Guidance for the Public Notification (PN) Rule.

The commission proposes to amend §290.110(g)(1) to resolve inconsistencies between state and federal regulations and delete a redundant sentence. The proposal requires a water system with an MRDL violation for chlorine dioxide to consult with the executive director within 24 hours rather than notify the executive director by the end of the next business day, consistent with the requirements of the federal PNR in 40 CFR §141.202(a)(5) and (b)(2). The proposed amendment to §290.110(g)(1) will also eliminate redundant verbiage more appropriately contained solely in §290.110(g).

The commission proposes to amend §290.110(g)(2) to update citations that changed as a result of moving the requirement currently in §290.110(b)(1) to §290.111(d)(1)(D).

The commission proposes to repeal existing §290.111 and replace it with a new §290.111 to incorporate new federal rule requirements, to relocate some of the requirements currently contained in §290.110 into this section, and to amend several of the existing provisions.

Existing §290.111, Turbidity, contains the turbidity requirements for surface water treatment plants; turbidity is a surrogate for possible microbial contamination. All of the conditions for surface water treatment (and treatment of groundwater under the direct influence of surface water) are proposed to be moved to the new section containing all of the requirements for surface water treatment plants (and plants treating groundwater under the direct influence of surface water). Throughout Chapter 290, and in the federal SDWA, the requirements for treatment of groundwater under the direct influence of surface water are identical to the requirements for treatment of surface water, except where specific differences are explicitly noted. The new federal LT2 increases the disinfection requirements for surface water treatment plants, and also ties disinfection requirements to levels of turbidity or microbes in the source water. Therefore, the proposed new §290.111 brings all of these requirements for surface water treatment plants together in one section. The commission also proposes changing the name of §290.111 from "Turbidity" to "Surface Water Treatment" to more accurately reflect what is contained in this section.

The proposed new §290.111 will continue to contain requirements that only apply to plants treating surface water or groundwater that is under the direct influence of surface water. In addition, the proposed section will incorporate new requirements regarding raw surface water monitoring; move and amend the existing overall treatment technique requirements for viruses, *Giardia lamblia*, and *Cryptosporidium parvum*; relocate and amend the existing disinfection and inactivation requirements for these pathogens; update the existing turbidity requirements for plants using conventional filters; contain new performance requirements for unconventional filters such as cartridge and membrane filters; identify new treatment credits that plants providing enhanced treatment can receive; and relocate and amend the existing requirements related to monitoring and reporting, compliance determinations, and public notification.

The commission proposes new §290.111(a) to identify the types of public water systems that are subject to the requirements of this proposed section. The proposed requirement is currently contained in existing §290.111(a). In new §290.111(a)(1) through (a)(3), the commission proposes implementation schedules for systems treating surface water, groundwater under the direct influence of surface water, or a combination of these sources. The proposed implementation schedules are consistent with the requirements of the federal LT2 in 40 CFR §141.73 and related federal regulations.

The commission proposes new §290.111(b) to incorporate the raw surface water monitoring requirements contained in the federal LT2 in 40 CFR §141.700(c)(1) to require a system treating surface water or groundwater under the direct influence of surface water to conduct two rounds of special monitoring to determine site-specific minimum treatment technique requirements for *Cryptosporidium parvum* and other pathogens. Proposed §290.111(b) would allow the executive director to waive the monitoring requirements for systems that meet the maximum treatment technique requirements imposed by the federal rule, in accordance with the federal LT2 in 40 CFR §141.701(d).

The commission proposes new §290.111(b)(1) to establish the mechanism that the commission proposes to use to ensure that raw surface water monitoring plans comply with the requirements of the federal LT2 in 40 CFR §141.701 and §141.702(a).

The commission proposes new §290.111(b)(2) to incorporate the raw water sampling location requirements of the federal LT2 in 40 CFR §141.703.

The commission proposes new §290.111(b)(3) to address several requirements contained within LT2. The proposed new §290.111(b)(3)(A) through (b)(3)(C) incorporate the requirements of 40 CFR §141.700(b)(1) and 40 CFR §141.701(a)(1). The commission proposes to add new §290.111(b)(3)(A)(i) and (b)(3)(A)(ii) to provide the population or combined distribution system basis for scheduling raw surface water *Cryptosporidium* sampling consistent with the federal LT2 in 40 CFR §141.700(b)(1). The commission proposes new §290.111(b)(3)(B) to address the requirements of 40 CFR §141.701(a)(3) and (a)(4). Proposed new §290.111(b)(3)(B)(i) through (b)(3)(B)(iii) contain the LT2 basis for *Cryptosporidium* sampling at small systems with elevated *E. coli* levels. The proposed §290.111(b)(3)(C) gives the executive director the latitude needed to implement 40 CFR §141.701(e).

The commission proposes new §290.111(b)(4) to address the raw water sample scheduling requirements of the federal LT2 in 40 CFR §141.702(b) and (b)(1). The commission proposes to add new §290.111(b)(4)(A) to contain the requirement that samples be collected within two days before or after the date approved by the executive director. The commission proposes to add new §290.111(b)(4)(B) to contains the requirement that if a system fails to collect the sample within that period, they must explain why in writing.

The commission proposes new §290.111(b)(5) to consolidate and define an implementation approach for meeting the requirements of the federal LT2 in 40 CFR §141.702(b)(2) and (c).

The commission proposes new §290.111(b)(6) to incorporate the analytical requirements of the federal LT2 in 40 CFR §141.704 and §141.705. The commission proposes to add new §290.111(b)(6)(A) and (b)(6)(B) to contain the analytical requirements for raw water *Cryptosporidium* and *E. coli*, respectively. The commission proposes to add new §290.111(b)(6)(B)(i) through (b)(6)(B)(iii) to contain details for approved sample collection requirements of the federal LT2 in 40 CFR §141.705. The commission proposes to add new §290.111(b)(6)(C) to contain the analytical requirement that turbidity be analyzed at a laboratory approved by the executive director.

The commission proposes new §290.111(b)(7) to address the reporting requirements of 40 CFR §141.706 and to facilitate implementation of the regulatory approach of proposed new §290.111(b)(5). Proposed §290.111(b)(7)(A) requires systems to use the commission form 20358 for reporting raw surface sample results. Proposed new §290.111(b)(7)(A)(i) requires systems to explain in writing if they miss a required sample period. Proposed new §290.111(b)(7)(A)(ii) requires that if the lab could not obtain a valid analytical result from the sample, that the system submit a request to collect a replacement sample to the executive director, consistent with the federal LT2 requirements of 40 CFR §141.706. The commission proposes new §290.111(b)(7)(B) to contain the reporting deadline, consistent with 40 CFR §141.706, and subsection (b)(7)(C), to contain the mailing address for reports consistent with existing §290.111(e)(7).

The commission proposes new §290.111(c) to implement the requirements of the federal LT2 in 40 CFR §§141.170(a), 141.170(a)(1), 141.500(a)(1), 141.700(c)(3) and (c)(5), 141.710, 141.711, and 141.713.

The commission proposes new §290.111(c)(1) and (c)(2) to contain the *Giardia lamblia* and viral treatment technique requirements in existing §290.111(b)(1).

The commission proposes new §290.111(c)(3) to incorporate the treatment technique requirements for *Cryptosporidium parvum*. Proposed new §290.111(c)(3)(A) through (c)(3)(C) will incorporate new requirements imposed by various paragraphs in 40 CFR §§141.710, 141.711, and 141.713. The commission proposes Figure 30 TAC §290.111(c)(3)(b), Treatment Technique Requirements for *Cryptosporidium*, to present the information in a clear and organized manner. The proposed new §290.111(c)(3)(D) will contain the *Cryptosporidium parvum* requirement currently in §290.111(b)(1).

The commission proposes §290.111(c)(4) to incorporate a *Cryptosporidium* treatment technique requirement for sources that receive a raw surface water source monitoring waiver under proposed §290.111(b).

The commission proposes new §290.111(c)(5) to contain requirements moved from existing §290.110(b)(1) and §290.111(b)(1).

The commission proposes new §290.111(c)(6) to authorize the executive director to establish requirements for watershed control and treatment processes that are used to meet LT2 treatment technique requirements for waterborne pathogens. This proposal provides the executive director with the means to comply with the special primacy requirements of 40 CFR §142.16(n) and to ensure that a water system meets the applicable requirements of the federal LT2 in 40 CFR §141.721(f).

The commission proposes new §290.111(d)(1) to move the requirements currently in various parts of existing §290.110, to provide some additional treatment options from LT2, and to incorporate provisions of the federal rule. Specifically, the commission proposes to add new §290.111(d)(1)(A) and (d)(1)(B) to contain the requirements of existing §290.110(b)(1) and existing §290.111(b)(1). The commission proposes Figure 30 TAC §290.111(d)(1), Microbial Inactivation Requirements, to present the information in a clear and organized manner.

The commission proposes new §290.111(d)(1)(C) to allow the executive to director to reduce the inactivation requirements for plants that are assigned to Bin 1 that are meeting enhanced performance standards at the effluent of each individual filter. The term "Bin" refers to the required level of microbial removal and inactivation at a surface water treatment plant (or plant treating groundwater under the direct influence of surface water). There are four possible Bin classifications: Bin 1, Bin 2, Bin 3, and Bin 4. The higher the Bin number, the higher the level of treatment that must be provided. The commission proposes to limit this additional removal credit to plants assigned to Bin 1 because plants assigned to Bins 2 - 4 have a higher source water pathogen concentration and it would therefore be inappropriate for such plants to reduce the level of protection provided by the disinfection process.

The commission proposes to add new §290.111(d)(1)(D) to incorporate the existing §290.110(f)(4) that a system which fails to meet the inactivation requirements for a four-hour period commits a treatment technique violation.

The commission proposes to add new §290.111(d)(1)(E) to incorporate the requirements of the federal LT2 in 40 CFR §141.720(d)(3)(ii).

The commission proposes new §290.111(d)(2) to contain the requirements for in-plant monitoring related to the effectiveness of disinfection moved from existing §290.110(c)(1).

The commission proposes new §290.111(d)(2)(A) to contain the requirements for monitoring pH. temperature, and flow moved from §290.110(c)(1)(A).

The commission proposes new §290.111(d)(2)(B) to contain the requirements for determining contact time moved from §290.110(c)(1)(B).

The commission proposes new §290.111(d)(2)(C) to contain the requirements for retesting when inactivation fails to meet the inactivation requirements moved from §290.110(c)(1)(C).

The commission proposes new §290.111(d)(3) to contain monitoring requirements imposed by the federal LT2 in 40 CFR §141.720(d)(3) for systems using UV to meet the inactivation requirements of this proposed subsection.

The commission proposes new §290.111(d)(3)(A) to contain the requirement for monitoring UV intensity, lamp status and flow imposed by the federal LT2 in 40 CFR §141.720(d)(3).

The commission proposes new §290.111(d)(3)(B) to contain the requirements for plants in Bins 2, 3, or 4 to also monitor the volume of water treated in accordance with the federal LT2 in 40 CFR §141.720(d)(3).

The commission proposes new §290.111(d)(4) to relocate or copy many of the requirements currently contained §290.110(d), to allow the use of a new analytical method for chlorine dioxide, and to identify the approved method for measuring ozone concentrations.

The proposed new §290.111(d)(4)(A) and (d)(4)(B) contain the requirements for pH analysis and temperature measurement consistent with existing §290.110(d)(1) and (d)(2), respectively.

The commission proposes new §290.111(d)(4)(C) to contain the requirements for in-plant free chlorine monitoring moved from existing §290.110(d)(3), except that the reference to color comparator methods has been intentionally omitted. The comparator methods are less precise and yield more subjective results. Consequently, they should not be used to quantify the level of inactivation achieved by the disinfection process.

The commission proposes new §290.111(d)(4)(C)(i), (d)(4)(C)(ii), (d)(4)(C)(iii), and (d)(4)(C)(iv) to contain the requirements for amperometric, DPD Ferrous, DPD photometric, and springaldizine methods to measure free chlorine moved from existing §290.110(d)(3)(A), §290.110(d)(3)(B), §290.110(d)(3)(C)(i), and §290.110(d)(3)(D), respectively.

The commission proposes new §290.111(d)(4)(D) to contain the requirements for in-plant chloramine monitoring moved from existing §290.110(d)(3), except that the reference to color comparators methods has been intentionally omitted. Color comparators accuracy is inadequate to quantify the level of inactivation achieved by the disinfection process.

The commission proposes new §290.111(d)(4)(D)(i), (d)(4)(D)(ii), and (d)(4)(D)(iii) to contain the requirements for in-plant chloramine monitoring moved from existing §290.110(d)(4)(A), (d)(4)(B), and (d)(4)(C)(i), respectively.

The commission proposes new §290.111(d)(4)(E) to contain the requirements for in-plant chlorine dioxide monitoring of existing §290.110(d)(5).

The commission proposes new §290.111(d)(4)(E)(i) to contain the amperometric method currently approved in the existing §290.110(d)(5)(A) and proposes §290.111(d)(4)(E)(ii) to contain a reference to the new Lissamine Green method also proposed in new §290.110(d)(3)(B).

The commission proposes to add new §290.111(d)(4)(F) to reference the EPA-approved Indigo Method for measuring ozone residuals.

The commission proposes to add new §290.111(d)(4)(G) to contain the analytical requirements for UV of the federal LT2 in 40 CFR §141.720(d)(3)(i).

The commission proposes to add new §290.111(e) to contain the treatment technique requirements for turbidity currently contained in §290.111(b). Proposed new §290.111(e) addresses all of the treatment techniques, performance criteria, monitoring requirements, special investigation requirements, and analytical methods related to turbidity monitoring at plants using conventional filters. These requirements are currently contained in §290.111(b) through (d) and are proposed to be reorganized and updated to remove references to the implementation timelines for provisions that have already become effective.

The commission proposes new §290.111(e)(1) to contain the combined filter effluent (CFE) turbidity standards of existing §290.111(b)(1). The commission proposes new §290.111(e)(1)(A) to contain the existing requirement of §290.111(b)(1)(A) and proposes new §290.111(e)(1)(B) to contain the existing requirement of §290.111(b)(1)(B). The provisions of existing §290.111(b)(1)(C) are not proposed to be transferred because the effective date of this provision has passed.

The commission proposes to add new §290.111(e)(2) to contain the individual filter effluent turbidity (IFE) standards that currently exist in §290.111(b)(2). The commission proposes to add new §290.111(e)(2)(A) to contain the requirements currently contained in §290.111(b)(2)(B) and (b)(2)(C). The commission proposes to merge the requirements currently contained in §290.111(b)(2)(B) and (b)(2)(C) and move them to proposed §290.111(e)(2)(A) since the effective date for small systems has passed. The commission proposes new §290.111(e)(2)(B) to contain the requirements of existing §290.111(b)(2)(A).

The commission proposes new §290.111(e)(3) to contain the routine turbidity monitoring requirements currently contained in §290.111(c). The proposed new §290.111(e)(3)(A) contains the CFE requirements of existing §290.111(c)(1)(A) and the proposed new §290.111(e)(3)(B) contains the CFE requirements of existing §290.111(c)(2)(A).

Proposed new §290.111(e)(3)(C) contains the IFE monitoring requirements currently contained in existing §290.111(c)(3) and (c)(4)(A).

The commission proposes new §290.111(e)(3)(D) to relocate the CFE and IFE monitoring requirements for plants that continuously monitor CFE in lieu of IFE from existing §290.111(c)(1)(B), (c)(2)(B), and (c)(4)(B) to proposed new §290.111(e)(3)(D).

The commission proposes new §290.111(e)(3)(D)(i) to contain the requirements for CFE monitoring from existing §290.111(c)(1)(B).

The commission proposes new §290.111(e)(3)(D)(ii) to contain the requirements for IFE monitoring from existing §290.111(c)(1)(C).

The commission proposes to delete the provisions equivalent to those currently contained in §290.111(c)(1)(C), (c)(2)(C), or (c)(4)(C) because the effective dates of these existing provisions have passed.

The commission proposes new §290.111(e)(4) to contain the special monitoring requirements currently contained in §290.111(c)(5) through (c)(7).

The commission proposes new §290.111(e)(4)(A) to contain the special monitoring requirements of existing §290.111(c)(5) and (c)(6), merging the requirements for large and small plants, since all plants are subject to the same requirements now.

The commission proposes new §290.111(e)(4)(A)(i) to contain the filter profile requirements of existing §290.111(c)(5)(A) and (c)(6)(A).

The commission proposes new §290.111(e)(4)(A)(ii) to contain the filter assessment requirements of existing §290.111(c)(5)(B) and (c)(6)(B).

The commission proposes new §290.111(e)(4)(A)(iii) to contain the comprehensive performance evaluation requirements of existing §290.111(c)(5)(C) and (c)(6)(C).

Similarly, the commission proposes new §290.111(e)(4)(B) will contain the special monitoring requirements for systems monitoring CFE in lieu of IFE currently contained in §290.111(c)(7).

The commission proposes new §290.111(e)(4)(B)(i) to contain the filter profile requirements for systems monitoring CFE in lieu of IFE of existing §290.111(c)(7)(A).

The commission proposes new §290.111(e)(4)(B)(ii) to contain the filter assessment requirements for systems monitoring CFE in lieu of IFE of existing §290.111(c)(7)(B).

The commission proposes new §290.111(e)(4)(B)(iii) to contain the comprehensive performance evaluation requirements for systems monitoring CFE in lieu of IFE of existing §290.111(c)(7)(C).

The commission proposes new §290.111(e)(5) to contain the analytical requirements currently contained in §290.111(d) and reference a new turbidity method recently approved by the EPA.

The commission proposes new §290.111(e)(5)(A)(i) and (e)(5)(A)(ii) to relocate the provisions currently contained in §290.111(d)(1). The commission proposes to add new §290.111(e)(5)(A)(iii) to reference the Hach FilterTrak Method 10133 contained in the federal LT2 in 40 CFR §141.74(a)(2).

The commission proposes new §290.111(e)(5)(B) to contain the requirements of existing §290.111(d)(2) regarding continuous or grab sampling for turbidity.

The commission proposes new §290.111(e)(5)(C) to contain the requirements for continuous turbidity monitoring in existing §290.111(d).

The commission proposes new §290.111(e)(5)(C)(i) to contain the SCADA requirements for continuous turbidity monitoring in existing §290.111(d)(3)(A).

The commission proposes new §290.111(e)(5)(C)(ii) to contain the SCADA requirements for grab sampling at large systems when there is a failure of continuous turbidity monitoring in existing §290.111(d)(3)(B).

The commission proposes new §290.111(e)(5)(C)(iii) to contain the requirements of existing §290.111(d)(5)(B) grab sampling when there is a failure of continuous turbidity monitoring at small systems.

The commission proposes new §290.111(e)(5)(D) to relocate the requirement currently contained in §290.111(d)(6). The commission proposes not to replace the expired provision contained in the §290.111(d)(7), which is proposed for repeal.

The commission proposes new §290.111(f) to incorporate the requirements of current §290.111(b)(1)(B) and establish minimum filtration requirements consistent with those contained in the federal LT2 in 40 CFR §141.719.

The commission proposes new §290.111(f)(1) to incorporate the requirements of 40 CFR §141.73(d) that requires the state to set treatment technique requirements for unconventional filtration technologies.

The commission proposes new §290.111(f)(1)(A) to incorporate the requirements currently contained in §290.111(b)(1)(B) and proposes new §290.111(f)(1)(B) to incorporate the requirements of 40 CFR §141.73(d) that require the state to set operating requirements for unconventional filtration technologies if microbial treatment credit is awarded.

The commission proposes new §290.111(f)(2), (f)(2)(A) and (f)(2)(B) to incorporate the requirements of 40 CFR §141.700(a) and provide consistency with existing §290.111(c)(1).

The commission proposes new §290.111(f)(2)(C) to incorporate the provisions of 40 CFR §141.719(b)(4)(i) and (b)(4)(ii) which require membrane filters be monitored continuously and readings recorded.

The commission proposes new §290.111(f)(2)(D) to incorporate the provisions of 40 CFR §141.719(b)(3) and (b)(3)(i) that require systems using membrane filters to conduct direct integrity testing.

The commission proposes new §290.111(f)(2)(D)(i) to incorporate the requirements of 40 CFR §141.719(b)(3)(ii) and (b)(3)(iii) that systems using membrane filters conduct direct integrity testing with sufficient sensitivity.

The commission proposes new §290.111(f)(2)(D)(ii) to incorporate the requirements of 40 CFR §141.719(b)(3)(iv) that systems using membrane filters conduct direct integrity testing that allows them to assure the membrane unit meets the removal credit approved by the executive director.

The commission proposes new §290.111(f)(2)(D)(iii) to incorporate the ability of the state described in 40 CFR §141.719(b)(3)(vi) and 40 CFR §141.73(d) to approve less frequent direct integrity testing.

The commission proposes new §290.111(f)(2)(D)(iv) to incorporate the requirements of 40 CFR §141.719(b)(3)(vi) regarding the frequency of direct integrity testing and the ability of the state to approve less frequent direct integrity testing to these same systems.

The commission proposes new §290.111(f)(2)(D)(v) to incorporate the requirements of 40 CFR §141.719(b)(4)(iv) and (b)(4)(v) that systems using membrane filters conduct direct integrity testing if indirect integrity testing shows possible system failure.

The commission proposes new §290.111(f)(2)(D)(vi) to incorporate the requirements of 40 CFR §141.719(b)(3)(v) that systems using membrane filters which fail direct integrity testing must remove the membrane unit from service until it is fixed.

The commission proposes new §290.111(f)(2)(E) to incorporate the requirements of 40 CFR §141.73(d) that requires the state to set monitoring requirements for unconventional filtration technologies if microbial treatment credit is awarded.

The commission proposes new §290.111(f)(3) to consistently apply the analytical requirements in proposed §290.111(e)(5) to turbidity measurements.

The commission proposes new §290.111(f)(3)(A) which references the proposed new §290.111(e)(5)(A) in order to maintain consistency in the methods used to measure CFE turbidity levels regardless of the type of filtration technology used at the plant.

The commission proposes new §290.111(f)(3)(B) to incorporate provisions consistent with the requirements of the federal LT2 in 40 CFR §141.719(b)(4)(i). Although the proposed rule continues to allow the executive director to approve other methods of monitoring water quality, the proposal also continues to require the EPA-approved Hach FilterTrak Method 10133 at plants that choose to monitor the turbidity level of the water produced by individual filter units.

The commission proposes new §290.111(f)(3)(C) to incorporate the requirements of 40 CFR §141.73(d) that requires the state to set analytical requirements for unconventional filtration technologies.

The commission proposes new §290.111(f)(3)(D) to extend the data collection requirements proposed in new §290.111(e)(5)(C) to unconventional filtration technologies.

The commission proposes new §290.111(f)(3)(E) to consistently apply the monitoring requirements in proposed §290.111(e)(5)(C)(ii) to cartridge filters.

The commission proposes new §290.111(g) to implement various provisions of the LT2 which identify several approaches that treatment plants can use to achieve enhanced pathogen control and allow the state to establish design, operational, monitoring, and reporting requirements for these approaches.

The commission proposes new §290.111(g)(1) to incorporate the provisions of the federal LT2 in 40 CFR §141.718(b). The proposed rules will allow the executive director to approve a 1.0-log *Cryptosporidium* removal credit for plants that meet enhanced IFE performance criteria or approve a 0.5-log *Cryptosporidium* removal credit to plants that meet enhanced CFE, but not enhanced IFE, performance criteria. The commission's proposal is consistent with the LT2 requirement that plants meeting both enhanced IFE and CFE performance criteria receive credit for providing a maximum of 1.0-log *Cryptosporidium* credit.

The commission proposes new §290.111(g)(1)(A) to incorporate the requirement of the federal LT2 in 40 CFR §141.718(b) that plants have the ability to receive additional 1.0-log microbiological treatment credit for media filters if specified conditions are met on each filter.

The commission proposes new §290.111(g)(1)(A)(i), (g)(1)(A)(ii), and (g)(1)(A)(iii) to incorporate the requirement of 40 CFR §141.718(b) that plants receive an additional microbiological treatment credit if the filtered water turbidity of each filter is continuously monitored and recorded every 15 minutes and the filtered water turbidity of each filter is less than or equal to 0.15 NTU in at least 95% of the measurements recorded each month, and if no individual filter produces water above 0.3 NTU in two consecutive readings.

The commission proposes new §290.111(g)(1)(B), (g)(1)(B)(i), and (g)(1)(B)(ii) to address the requirements of 40 CFR §141.718(b)(3) that the executive director has the ability to approve additional treatment credits if the plant does not meet §290.111(g)(1)(A) and if the executive director determines that the failure was caused by unusual and short term events that could not be prevented by plant design, operation or maintenance and if this is only the first or second such failure within the last twelve months.

The commission proposes new §290.111(g)(2) to incorporate the requirement of the federal LT2 in 40 CFR §141.718(a) that plants have the ability to receive an additional 0.5-log microbiological treatment credit for media filters if three conditions are met. Specifically, the commission proposes new §290.111(g)(2)(A), (g)(2)(B), and (g)(2)(C) to incorporate the requirements of 40 CFR §141.718(a) and (b) that plants receive additional microbiological treatment credit if the filtered water turbidity of each filter is continuously monitored and recorded every 15 minutes, and the combined filter effluent turbidity is less than or equal to 0.15 NTU in at least 95% of the measurements recorded each month. As the third condition, the commission proposes new §290.111(g)(2)(C) to incorporate the implicit requirements of 40 CFR §141.718(a) and (b) to ensure that a treatment plant does not receive a total of more than 1.0 log of additional credit allowed by federal rule for plants meeting enhanced performance standards for both IFE and CFE turbidity levels in the same month.

The commission proposes new §290.111(g)(3) to incorporate the requirement of the federal LT2 in 40 CFR §141.719(c) that plants have the ability to receive an additional 0.5-log microbiological treatment credit for a second set of filters if four conditions are met. As the first of these four conditions, the commission proposes new §290.111(g)(3)(A) to incorporate the requirement of 40 CFR §141.719(c) that plants have the ability to receive an additional 0.5-log microbiological treatment credit for a second set of filters if the filters meet existing state filter design criteria. As the second of these four conditions, the commission proposes new §290.111(g)(3)(B) to incorporate the requirement of 40 CFR §141.719(c) that plants have the ability to receive an additional 0.5-log microbiological treatment credit for a second set of filters if all of the plant flow passes through both stages of filters. As the third and fourth of these four conditions, the commission proposes new §290.111(g)(3)(C) and (g)(3)(D) to incorporate the requirement of 40 CFR §141.719(c) to establish that plants have the ability to receive an additional 0.5-log microbiological treatment credit for a second set of filters if the individual filter turbidity of the first stage of filters is monitored and recorded every 15 minutes. To receive the additional credit for the second stage of filtration, the first stage of filters must also meet the existing minimum requirements to achieve the existing treatment credit.

The commission proposes new §290.111(g)(3)(D) to incorporate the requirements of 40 CFR §141.719(c) and existing §290.111(e)(1)(A) that plants have the ability to receive an additional 0.5-log microbiological treatment credit for a second set of filters if the individual filter turbidity of the first stage of filters is below 1.0 NTU. To receive the additional credit for the second stage of filtration, the first stage of filters must meet the existing minimum requirements to achieve the existing treatment credit.

The commission proposes new §290.111(g)(4) to incorporate the requirement of 40 CFR §141.718(c) that plants have the ability to receive an additional microbiological treatment credit for other treatment strategies if approved by the executive director.

The commission proposes new §290.111(g)(4)(A) to incorporate the requirement of 40 CFR §141.718(c) that plants have the ability to receive an additional microbiological treatment credit for other treatment strategies if the other strategies achieve a quantifiable reduction in the risk of waterborne disease and treats all the water produced by the plant.

The commission proposes new §290.111(g)(4)(B) to incorporate the requirement of 40 CFR §141.718(c) and 40 CFR §141.715(a)(1) that plants have the ability to receive an additional microbiological treatment credit for other treatment strategies if the other strategies conform to applicable requirements found in 40 CFR §§141.715 through 141.720.

The commission proposes new §290.111(g)(4)(C) to incorporate the requirement of 40 CFR §141.718(c)(3) that the executive director have the ability to establish minimum site-specific requirements for alternative treatment strategies.

The commission proposes new §290.111(g)(4)(D) to incorporate the requirement of 40 CFR §141.718(c)(1) that the executive director cannot approve additional treatment credits for alternative treatment strategies if the treatment process already has treatment credits in this subsection.

The commission proposes new §290.111(h) to move the provisions currently contained in §290.111(e) and to incorporate the reporting requirements associated with the new federal rules.

The commission proposes new §290.111(h)(1) in order to relocate the requirement currently in §290.111(e)(1). The proposed change also results in an amendment which reduces the time

that a public water system has to consult with the executive director following a CFE reading over 1.0 NTU. This amendment is necessitated by requirements of the federal PNR in 40 CFR §141.202(a)(5) and (b)(2).

The proposed new §290.111(h)(2) contains a version of the requirement in existing §290.111(e)(2). The proposed amendment more accurately describes the types of systems that must submit a Surface Water Monthly Operating Report.

Similarly, the proposed new §290.111(h)(3) contains an amended version of the requirement in existing §290.111(e)(3). The proposal results in a provision which updates the description of, and form number for, the report used by plants that continuously monitor CFE turbidity in lieu of IFE turbidity.

The proposed new §290.111(h)(4), (h)(5) and (h)(6) contain amended versions of the requirements in existing §290.111(e)(4) through (e)(6). In this case, the amendments reflect the locations of the applicable provisions in the new §290.111(e)(4).

The proposed new §290.111(h)(7) and (h)(8) contain the reporting requirements for plants using membrane and UV facilities, respectively, and address the requirements of the federal LT2 in 40 CFR §171.721(f)(10) and (15), respectively.

The proposed new §290.111(h)(9) would require systems using other technologies to meet the treatment technique requirements of state and federal rules to submit other reports that the executive director needs to determine if the plant is meeting minimum standards. This proposed provision is consistent with the LT2 requirements contained in 40 CFR §171.721(f), (f)(8), (f)(9), and 40 CFR §171.718(c)(3).

The proposed new §290.111(h)(10) contains an amended version of the requirement in existing §290.111(e)(7) which is proposed to be amended to use the correct name of the TCEQ and the correct syntax protocol for the mailing address.

The commission proposes new §290.111(i)(1) to address all of the monitoring violations that could occur under proposed §290.111. The proposed new §290.111(i)(1) covers the requirements in existing §290.110(c)(1) and §290.111(f)(1) and addresses various monitoring requirements contained throughout 40 CFR Part 141, Subpart Q - Enhanced Treatment for *Cryptosporidium*.

The proposed new §290.111(i)(2) relocates the reporting violations in existing §290.110(c)(2) and §290.111(f)(2) and (f)(3) and addresses various reporting requirements contained throughout 40 CFR Part 141, Subpart Q - Enhanced Treatment for *Cryptosporidium*.

The commission proposes new §290.111(i)(3) which will replace the analogous existing rule, §290.111(f)(4).

The commission proposes new §290.111(i)(4) to establish the criteria for an acute treatment technique violation for plants using membrane technology and in response to the federal LT2 requirements in 40 CFR §141.173(b) and 40 CFR §141.551(a)(2).

The proposed new §290.111(i)(5) relocates the provisions in existing §290.110(b)(1), replaces the current version of §290.111(f)(5) which the commission proposes to repeal, and allows the executive director to implement the requirements of the federal LT2 in 40 CFR §141.711(a).

The commission proposes new §290.111(i)(6) to contain an existing violation criteria in §290.111(f)(6).

The commission proposes the new §290.111(i)(7) to comply with directives received from the EPA and contained in their publication EPA 816-R-01-010, Final State Implementation Guidance for the Public Notification (PN) Rule.

The commission proposes to relocate the public notice requirements in existing §290.111(g) to proposed new §290.111(j).

The commission proposes new §290.111(j)(1) to relocate and amend the public notification requirements in existing §290.111(g)(1). This would address the proposed acute treatment technique requirements for plants using membrane technology and assure that systems notify their customers in accordance with the timelines established in the federal LT2 in 40 CFR §141.202(b)(2).

The proposed new §290.111(j)(2) contains an amended version of the rule currently contained in §290.111(g)(2). This would allow the commission to address the provisions of the federal PNR in 40 CFR §141.202(a)(5) and (b)(2), incorporating the correct 24-hour reporting requirement, to replace the incorrect reference to reporting occurring by the end of the next business day.

The proposed new §290.111(j)(2)(A) addresses the requirement in the federal PNR in 40 CFR §141.202(b)(2) for the executive director to determine the level of customer notification required after the occurrence of a combined filter turbidity exceedance of 1.0 NTU based on the results of the consultation with the water system.

The commission proposes new §290.111(j)(2)(B) to incorporate 40 CFR §141.202(b)(2) requiring a system to notify its customers in accordance with the requirements of §290.122(a) if they fail to consult with the executive director after the occurrence of a combined filter turbidity exceedance of 1.0 NTU.

The commission proposes the new §290.111(j)(3) to address the public notification requirements in existing §290.110(b)(1) and §290.111(f)(5) and treatment technique requirements described in §290.111(c), (d)(1), (e)(1) and (f)(1).

Section 290.112, Total Organic Carbon (TOC), contains requirements related to the removal of naturally occurring organic material (total organic carbon) in source water that may form potentially harmful disinfection by-products.

The commission proposes to amend §290.112 to add references to elements added elsewhere as part of the incorporation of new federal requirements, to remove references to effective dates that have passed, to correct internal references, and to correct typographical and syntax errors.

Section 290.112(b)(1) is proposed to be amended to write out the first use of the terms "total organic carbon" and "milligrams per liter" before using their acronyms, in accordance with agency syntax protocols. Section 290.112(b)(2)(C) is proposed to be amended to write out the first use of the terms "calcium carbonate," "total trihalomethanes," and "haloacetic acid-group of five" prior to using their acronyms. Section 290.112(b)(2)(E) is proposed to be amended to write out the first use of the terms "specific ultraviolet absorbance" and "liters per milligram-meter" prior to using their acronyms.

In §290.112(e)(1) is proposed to be amended to update the name of the agency from "Texas Natural Resource Conservation Commission" to "Texas Commission on Environmental Quality" in the mailing address, consistent with United States Postal Service syntax protocols. The TCEQ form number for the Monthly Operational Report for Total Organic Carbon is pro-

posed to be added to §290.112(e)(2). The references to large system and small system effective reporting dates in 2001 and 2003 are proposed to be deleted from §290.112(e)(2)(A) and (e)(2)(B), respectively. References to disinfection by-products requirements in §290.112(e)(3)(A) are proposed to be updated to refer to §290.113 and §290.115 containing existing Stage 1 and proposed DBP2 requirements. Section 290.112(e)(3)(B) is proposed to be amended by deleting the description of the internal reference to §290.113 because that description appears earlier in the text of this section.

Section 290.112(f)(4) is proposed to be added to explicitly identify the type of violation resulting from failure to perform a required public notification for consistency with PNR requirements specified in publication EPA 816-R-01-010, Final State Implementation Guidance for the Public Notification (PN) Rule.

Existing §290.113, Disinfection By-products (TTHM and HAA5), contains the standards for disinfection by-products resulting from the Stage 1 Disinfection Byproducts Rule promulgated by the EPA in December 1998.

The commission proposes to amend the title of §290.113 by adding the term "Stage 1" because this section includes the requirements of the federal Stage 1 Disinfection Byproducts Rule. This proposed amendment provides differentiation from 30 TAC §290.115 which is proposed to be added to include the provisions of the federal DBP2. The term "Stage 2" is proposed to be added to reference the provisions of the new rule.

The commission proposes to amend §290.113(a)(1) to include the schedule in Figure: 30 TAC §290.113(a)(1), Date to Start Stage 2 Compliance, upon which public water systems may cease to comply with the provisions of the Stage 1 Disinfection Byproducts Rule and must start to comply with the provisions of DBP2, as contained in 40 CFR §141.620(c)(1) through (c)(5). The commission proposes to amend §290.113(a)(2) to ensure that the monitoring dates are clear. The commission proposes to delete the existing language of §290.113(a)(1) through (a)(4) which reference effective dates that are in the past.

The commission proposes to add new §290.113(a)(2) to specify the dates upon which compliance with the Stage 1 requirements of this section will cease.

The commission proposes to amend Figure: 30 TAC §290.113(c)(3) by adding "Stage 1" to the title of the figure so that the new title is "Stage 1 Routine Monitoring Frequency and Locations for TTHM and HAA5." This proposed amendment provides differentiation from 30 TAC §290.115 which is proposed to be added to include the provisions of the federal DBP2.

The commission proposes to amend Figure: 30 TAC §290.113(c)(4) by adding "Stage 1" to the title of the figure so that the new title is "Stage 1 Reduced Monitoring Frequency and Locations for TTHM and HAA5." This proposed amendment provides differentiation from 30 TAC §290.115 which is proposed to be added to include the provisions of the federal DBP2.

The commission proposes to amend §290.113(e) to replace the outdated name of the agency with the current name and to format the agency's address consistent with United States Postal Service standards.

Section 290.114, Other Disinfection By-products (Chlorite and Bromate) contains the health-based standards, sampling requirements, reporting requirements, and public notification requirements for disinfection by-products other than trihalomethanes and haloacetic acids. It includes standards for chlorite, which is a by-product of disinfecting water using chlorine dioxide, and standards for bromate, which is a by-product of disinfecting water using ozone.

The commission proposes to amend §290.114 to add references to elements added elsewhere as part of the incorporation of new federal requirements, to remove references to effective dates that have passed, to correct internal references, and to correct typographical and syntax errors.

In §290.114(a)(1) the first use of the term "milligrams per liter" is proposed to be written out prior to use of its abbreviation. Section 290.114(a)(2)(B)(iv) and (a)(2)(B)(v) are proposed to be deleted to eliminate references to compliance deadlines that have passed. References to past deadlines are proposed to be removed from §290.114(a)(3). Specifically, the commission proposes to delete §290.114(a)(3)(B) which contains a compliance date that has passed, and proposes to renumber §290.114(a)(3)(C). The internal reference to reporting analytical results in existing §290.114(a)(4)(B) is proposed to be corrected to conform with agency syntax protocols. In §290.114(a)(4)(C) it is proposed to update the name of the agency from "Texas Natural Resource Conservation Commission" to "Texas Commission on Environmental Quality" in the mailing address, consistent with United States Postal Service standards. New §290.114(a)(5)(D) is proposed to be added to explicitly identify the type of violation resulting from failure to perform a required public notification for consistency with the PNR requirements specified in publication EPA 816-R-01-010, Final State Implementation Guidance for the Public Notification (PN) Rule.

The commission proposes to amend §290.114(b)(3) to delete the description of the contents of §290.119 because that subsection is previously referenced in this section. In addition, the reference in §290.114(b)(3) to use of certified labs is proposed to be amended to reflect that authority for certification of drinking water laboratories under the Safe Drinking Water Act has passed from the (then) Texas Department of Health to the TCEQ. The commission proposes to amend §290.114(b)(4) to update the name of the agency from "Texas Natural Resource Conservation Commission" to "Texas Commission on Environmental Quality" in the mailing address, consistent with United States Postal Service standards. New §290.114 (b)(5)(D) is proposed to be added to explicitly identify the type of violation resulting from failure to perform a required public notification for consistency with PNR requirements specified in publication EPA 816-R-01-010, Final State Implementation Guidance for the Public Notification (PN) Rule. The commission proposes to amend §290.114(b)(6)(A) by deleting the description of the contents of §290.122(b) to conform to the syntax standards.

The commission proposes to add new §290.115, Stage 2 Disinfection By-products (TTHM and HAA5), to contain the requirements of DBP2. EPA promulgated DBP2 as part of their congressional mandate to promulgate rules to reduce the risk to public health from potentially carcinogenic disinfection by-products, specifically trihalomethanes and haloacetic acids. Trihalomethanes and haloacetic acids increase the longer the water resides in distribution system pipes. The Stage 1 Disinfection By-products Rule based compliance on a running annual average of samples collected at all locations in the distribution system, which means that public water system customers living in more remote areas of a distribution system currently experience much greater risk than customers living near the plant. DBP2 reduces this inequity by requiring systems to identify locations in the system with elevated trihalomethane and haloacetic

acid levels and changing the compliance determination method to base compliance on locational running annual averages. The federal DBP2 is significantly different than the existing Stage 1 requirements, so a new section is proposed.

The commission proposes to add new §290.115(a) to contain the existing requirements of §290.113(a), consistent with the applicability requirements of the new federal DBP2 requirements. New §290.115(a)(1) is proposed to be added to reference the start dates for early monitoring requirements contained in proposed §290.115(c). New §290.115(a)(2) is proposed to be added to specify the dates upon which compliance with all of the requirements of DBP2 will start, and the requirements of the Stage 1 Disinfection Byproducts Rule contained in 40 CFR §141.620(c)(1) through (c)(5) will cease. The commission proposes Figure 30 TAC §290.115(a)(2), Date to Start Stage 2 Compliance, to present the information in a clear and organized manner. New §290.115(a)(2)(A) is proposed to be added to contain the requirement of the federal DBP2 in 40 CFR §141.620(c)(6) that establishes the start date for systems performing quarterly monitoring. New §290.115(a)(2)(B) is proposed to be added to contain the requirement of 40 CFR §141.620(c)(6)(ii) that establishes the start date for systems monitoring less frequently than quarterly.

The commission proposes to add new §290.115(b) to contain the MCL of existing §290.113(b); to incorporate the new MCL compliance method of the federal DBP2 in 40 CFR §141.625(b); and to contain the operation evaluation levels (OELs) for total trihalomethanes (TTHM) and the regulated group of five haloacetic acids (HAA5) of 40 CFR §141.626. New §290.115(b)(1) is proposed to be added to incorporate the MCLs for TTHM and HAA5 from existing §290.113(b), consistent with the MCLs set by the federal DBP2 in 40 CFR §141.64(b)(1)(i) and 40 CFR §141.625(b). New §290.115(b)(1)(A) is proposed to be added to contain the MCL for TTHM from existing §290.113(b)(1) and new §290.115(b)(1)(B) is proposed to be added to contain the MCL for HAA5 from existing §290.113(b)(2).

The commission proposes to add new §290.115(b)(2) to contain the calculation basis for determining the OEL of the federal DBP2 in 40 CFR §141.626(a). New §290.115(b)(2)(A) is proposed to be added to contain the OEL for TTHM and §290.115(b)(2)(B) is proposed to be added to contain the OEL for HAA5 from 40 CFR §141.626(a).

The commission proposes to add new §290.115(c) to contain the Stage 2 monitoring requirements for TTHM and HAA5 and to contain the elements of existing §290.113(c) that continue to apply under the new federal DBP2 rule.

The commission proposes to add new §290.115(c)(1) to contain the Stage 2 requirement of 40 CFR §141.600(a) that systems must determine Stage 2 compliance monitoring locations with representative high TTHM and HAA5 concentrations throughout the distribution system. In addition, the commission proposes to incorporate the dates that public water systems must determine these sites, as provided in the federal DBP2, 40 CFR §141.620(c)(1) through (5). This information is in Figure: 30 TAC §290.115(c)(1), Date to Establish Stage 2 Sites.

The commission proposes to add new §290.115(c)(1)(A) to contain the federal requirement of 40 CFR §141.600(b) that if a system is required to perform initial distribution system evaluation (IDSE) sampling, then that system must use those results when determining Stage 2 compliance locations.

The commission proposes to add new §290.115(c)(1)(B) to contain the related provision of 40 CFR §141.622(a)(2) describing the process that systems which are not required to do the early IDSE sampling must use to set Stage 2 compliance monitoring locations.

The commission proposes to add new §290.115(c)(1)(B)(i) to contain the provision of 40 CFR §141.622(a)(2) that systems which are required to have the same number of sample sites under both the Stage 1 and Stage 2 requirements can continue to use their existing Stage 1 sample locations under the new Stage 2 rules.

The commission proposes to add new §290.115(c)(1)(B)(ii) to contain the provision of 40 CFR §141.622(a)(2) requiring that systems with fewer existing Stage 1 sampling locations than the number of locations required by Stage 2 must identify additional sampling sites, and describing the required nature of these sample sites.

The commission proposes to add new §290.115(c)(1)(B)(iii) to contain the provision of 40 CFR §141.622(a)(2) that if a system has more existing Stage 1 sites than they are required to have under Stage 2, that the sites with highest TTHM and HAA5 levels must be used for Stage 2 compliance.

The commission proposes to add new §290.115(c)(1)(C) to incorporate the protocol for selecting Stage 2 sample sites given in the federal DBP2 in 40 CFR §141.605(c) by reference.

The commission proposes to add new §290.115(c)(2) to contain the routine Stage 2 sampling requirements of 40 CFR §141.621(a)(2) and to contain the existing requirement of §290.113(c)(2) that compliance samples must be collected under normal operating conditions. Section 290.115(c)(2) also contains Figure: 30 TAC §290.115(c)(2), Routine Stage 2 Monitoring Frequency and Number of Sites, which is included to present the dates in a clear and organized manner.

The commission proposes to add new §290.115(c)(3) to contain the reduced Stage 2 sampling locations and frequency of 40 CFR §141.623, which allows systems to sample less frequently if there are relatively low levels of TTHM and HAA5 detected in the distribution system. Section 290.115(c)(3) also contains Figure: 30 TAC §290.115(c)(3), Reduced Stage 2 Monitoring Frequency and Number of Sites, which is included to present the information in a clear and organized manner.

The commission proposes to add new §290.115(c)(3)(A) to contain the requirement of 40 CFR §141.623(a) that only compliance data may be used to qualify for reduced monitoring.

The commission proposes to add new §290.115(c)(3)(B) to contain the provisions of DBP2 relating to qualification to start reduced monitoring. The commission proposes to add new §290.115(c)(3)(B)(i) to contain the provision of 40 CFR §141.623(a) describing the conditions under which systems that are sampling annually or triennially may remain on reduced monitoring. The commission proposes to add new §290.115(c)(3)(B)(ii) to contain the provision of 40 CFR §141.623(b) describing the conditions under which a system sampling quarterly may remain on reduced monitoring. The commission proposes to add new §290.115(c)(3)(B)(iii) to contain the provisions of 40 CFR §141.623(a) describing the total organic carbon levels that must be maintained to allow a system treating surface water or groundwater under the direct influence of surface water to qualify for reduced monitoring.

The commission proposes to add new §290.115(c)(3)(C) to contain the provisions of 40 CFR §141.623(c) describing when systems will be returned to routine monitoring after reduced monitoring. The commission proposes to add new §290.115(c)(3)(C)(i) to contain the provision of 40 CFR §141.623(c) describing the conditions under which a system sampling quarterly will be returned to routine monitoring. The commission proposes to add new §290.115(c)(3)(C)(ii) to contain the provision of 40 CFR §141.623(c) describing the conditions under which a system sampling annually or triennially will be returned to routine monitoring. New §290.115(c)(3)(C)(iii) is proposed to be added to contain the provision of 40 CFR §141.623(c) describing the total organic carbon conditions under which a system treating surface water or groundwater under the direct influence of surface water will be returned to routine monitoring.

The commission proposes to add new §290.115(c)(3)(D) to contain the provision of 40 CFR §141.623(c) providing state authority to return a system to its routine monitoring schedule at any time.

The commission proposes to add new §290.115(c)(3)(E) to contain the provisions 40 CFR §141.627 requiring systems that are on reduced monitoring for Stage 1 and that have different monitoring locations for Stage 1 than for Stage 2 to initiate routine Stage 2 monitoring at the inception of the rule's effective dates.

The commission proposes to add new §290.115(c)(3)(F) to contain the conditions of 40 CFR §141.627 under which a system on reduced monitoring for Stage 1 may remain on reduced monitoring without interruption in the transition to Stage 2. The commission proposes to add new §290.115(c)(3)(F)(i) through (c)(3)(F)(iii) to contain the provisions of 40 CFR §141.627 establishing that a system must have received a waiver to initial distribution system sampling, meet Stage 2 reduced monitoring criteria, and have the same Stage 1 and Stage 2 monitoring locations to remain on reduced monitoring through the transition to the Stage 2 rule requirements.

The commission proposes to add new §290.115(c)(3)(G) to contain the provisions of 40 CFR §141.629(a)(3) allowing the executive director to perform calculations and determine whether the system is eligible for reduced monitoring in lieu of having the system report that information.

The commission proposes to add new §290.115(c)(4) to contain the increased monitoring provisions of the federal DBP2 in 40 CFR §141.625. The commission proposes to add new §290.115(c)(4)(A) to contain the provision of 40 CFR §141.625(a) requiring a system on less frequent monitoring to increase monitoring to quarterly if any compliance sample exceeds a maximum contaminant level. The commission proposes to add new §290.115(c)(4)(B) to contain the conditions of 40 CFR §141.625(c) under which a system on increased quarterly monitoring may be returned to routine monitoring. The commission proposes to add new §290.115(c)(4)(C) to contain the provisions of 40 CFR §141.628 setting sample locations and timing for increased monitoring.

The commission proposes to add new §290.115(c)(5) to contain the provisions of the federal DBP2 in 40 CFR §141.600 for initial distribution system evaluation sampling (IDSE). The commission proposes to add new §290.115(c)(5)(A) to contain the provisions of 40 CFR §141.600(d)(1) providing conditions under which very small systems may waive initial distribution system evaluation sampling.

The commission proposes to add §290.115(c)(5)(B) to contain the provisions and timing of 40 CFR §141.600(d)(1) providing conditions under which the executive director may grant a waiver of IDSE sampling to systems that have shown very low levels of TTHM and HAA5 in Stage 1. Section §290.115(c)(5)(B) also contains Figure: 30 TAC §290.115(c)(5)(B), Timing of Stage 1 Samples Evaluated for 40/30 IDSE Waiver, which is included to present the information in an organized and clear manner. The commission proposes to add new §290.115(c)(5)(B)(i) to establish the criteria of 40 CFR §141.603(b)(1) requiring that each sample a system collected under Stage 1 must have been less than half the maximum contaminant level to waive IDSE sampling. The commission proposes to add new §290.115(c)(5)(B)(ii) to contain the provisions of 40 CFR §141.603(b)(2) requiring submittal of data to qualify to waive iDSE sampling. The commission proposes to add new §290.115(c)(5)(B)(iii) to contain the authority granted the state in 40 CFR §141.603(b)(3) to require IDSE sampling even if the system meets other qualification requirements.

The commission proposes to add new §290.115(c)(5)(C) to incorporate the provisions of the federal DBP2 in 40 CFR §141.600(c) giving planning requirements, sampling schedules and reporting elements for systems that are required to perform IDSE sampling. Section 290.115(c)(5)(C) also contains Figure: 30 TAC §290.115(c)(5)(C), IDSE Schedule, which is included to present the information in a clear and organized manner.

The commission proposes to add new §290.115(c)(5)(C)(i) to list the required IDSE sampling plan elements. New §290.115(c)(5)(C)(i)(I) is proposed to be added to include the provisions of 40 CFR §141.601(a)(1) describing the required IDSE sampling plan schematic. New §290.115(c)(5)(C)(i)(II) is proposed to be added to include the provisions of 40 CFR §141.601(a)(2) relating to justification for sample site selection.

The commission proposes to add new §290.115(c)(5)(C)(ii) to describe how IDSE sampling must proceed in accordance with 40 CFR §141.601(b) and 40 CFR §141.601(a)(1). New §290.115(c)(5)(C)(ii)(I) is proposed to be added to incorporate the required number and type of IDSE sites of 40 CFR §141.601(a)(1). Section §290.115(c)(5)(C)(ii)(I) contains Figure: 30 TAC §290.115(c)(5)(C)(ii)(I), Number and Type of IDSE Sample Sites, which is included to present the information in a clear and organized manner. The commission proposes to add new §290.115(c)(5)(C)(ii)(II) to include the requirement for collection of dual sample sets at each monitoring location given in 40 CFR §141.601(a)(1). The commission proposes to add new §290.115(c)(5)(C)(ii)(III) to incorporate the provision of 40 CFR §141.601(a)(2) that IDSE sample locations must be different than the existing Stage 1 monitoring locations. The commission proposes to add new §290.115(c)(5)(C)(ii)(VI) to incorporate the requirement of 40 CFR §141.601(a)(2) requiring that IDSE sample locations must be distributed throughout the distribution system. The commission proposes to add new §290.115(c)(5)(C)(ii)(V) to incorporate the provisions of 40 CFR §141.601(a)(1) describing the frequency of IDSE monitoring. Section §290.115(c)(5)(C)(ii)(V) contains Figure: 30 TAC §290.115(c)(5)(C)(ii)(V), Frequency of IDSE Monitoring, which is included to present the information in a clear and organized manner. The commission proposes to add §290.115(c)(5)(C)(ii)(VI) to incorporate the requirement of 40 CFR §141.601(a)(4) that the IDSE monitoring frequency and locations may not be reduced.

The commission proposes to add new §290.115(c)(5)(C)(iii) to incorporate the provisions of 40 CFR §141.601(c) describing the required elements of the IDSE report. The commission proposes to add new §290.115(c)(5)(C)(iii)(I) to incorporate the provisions of 40 CFR §141.601(c)(1) requiring that the data be reported in the format directed by the executive director, as provided in regulatory guidance. The commission proposes to add new §290.115(c)(5)(C)(iii)(II) is proposed to be added to incorporate the provision of 40 CFR §141.601(c)(1) that a system must provide a new map or other documentation if changes occurred to the system after submittal of the IDSE plan. The commission proposes to add new §290.115(c)(5)(C)(iii)(III) to incorporate the provisions of 40 CFR §141.601(c)(2) requiring that the IDSE report must include an explanation of any deviations from the approved initial distribution system evaluation plan. The commission proposes to add new §290.115(c)(5)(C)(iii)(IV) to incorporate the requirements of 40 CFR §141.601(c)(3) requiring that the IDSE report recommend and justify Stage 2 sample sites under DBP2.

The commission proposes to add new §290.115(c)(5)(C)(iv) to allow systems to meet the initial distribution system requirements through submittal of a system specific study, as described in 40 CFR §141.602. The system specific study requirements are complex and expected to be used by few systems.

The commission proposes to add new §290.115(d) to establish that compliance samples analyzed for TTHM and HAA5 must be analyzed using the methods contained in the federal DBP2 in 40 CFR §141.600(e).

The commission proposes to add new §290.115(e) to include the reporting requirements for TTHM and HAA5 of existing §290.113(e), 40 CFR §141.626, and 40 CFR §141.629. The commission proposes to add new §290.115(e)(1) to incorporate the requirements of existing §290.113(e) requiring systems to report to the executive director results of any test related to TTHM or HAA5. The commission proposes to add new §290.115(e)(1)(A) to incorporate the provision of the federal DBP2 in 40 CFR §141.629(a)(1)(i) for submitting quarterly results. The commission proposes to add new §290.115(e)(1)(A)(i) to incorporate the provision of 40 CFR §141.629(a)(1)(i) requiring systems to report the number of samples taken during the last quarter. The commission proposes to add new §290.115(e)(1)(A)(ii) to incorporate the provision of 40 CFR §141.629(a)(1)(ii) that systems report the date and results of each sample taken during the previous quarter. The commission proposes to add new §290.115(e)(1)(A)(iii) to contain the provision of 40 CFR §141.629(a)(1)(iii) that systems must report compliance calculations. New §290.115(e)(1)(A)(iv) is proposed to be added to include the provision of 40 CFR §141.629(a)(1)(iv) that systems must report whether the MCL was exceeded at any monitoring location. The commission proposes to add new §290.115(e)(1)(A)(v) to incorporate the provision of 40 CFR §141.629(a)(1)(v) that systems must report exceedance of an operation evaluation level.

The commission proposes to add new §290.115(e)(1)(B) to incorporate the provision of 40 CFR §141.629(a)(1)(iii) relating to reporting locational running annual average exceedances.

The commission proposes to add new §290.115(e)(1)(C) to incorporate the provisions of 40 CFR §141.629(a)(2) and (a)(2)(v) relating to total organic carbon and disinfectant residual reporting requirements, respectively, for systems treating surface water or groundwater under the direct influence of surface water and seeking to conduct reduced monitoring.

The commission proposes to add new §290.115(e)(2) to incorporate the operation evaluation reporting requirements of the federal DBP2 in 40 CFR §141.626. New §290.115(e)(2)(A) is proposed to be added to incorporate the schedule of 40 CFR §141.626(b)(1) requiring systems to submit required operation evaluation reports 90 days after an operation evaluation level exceedance. The commission proposes to add new §290.115(e)(2)(B) to contain the description of the contents of an operation evaluation report. The commission proposes to add new §290.115(e)(2)(B)(i) through (e)(2)(B)(vi) to list the specific areas of distribution system operation to be discussed in the operation evaluation report. The commission proposes to add new §290.115(e)(2)(C) to incorporate the provision of 40 CFR §141.626(b)(2)(i) allowing the scope of an operation evaluation report to be limited with executive director approval, and requiring that limitation to be documented in writing as provided by 40 CFR §141.626(b)(2)(ii). The commission proposes to add new §290.115(e)(2)(D) to contain the requirement of 40 CFR §141.626(b)(1) that the operation evaluation report be submitted and approved in writing.

The commission proposes to add new §290.115(f) to contain the existing compliance determination requirements of §290.113(f) and additional requirements for compliance calculations and requirements of the new federal rule. The commission proposes to add new §290.115(f)(1) to contain the MCL compliance determination provision of the federal DBP2 in 40 CFR §141.625(b) requiring that compliance be based on the locational running annual average, and specifying the MCL violations for TTHM and HAA5. The commission proposes to add new §290.115(f)(1)(A) to contain the existing requirements of §290.113 that compliance will be calculated based on approved sample sites, and that invalidated samples will not be used for determining compliance. Additionally, new §290.115(f)(1)(A) is proposed to incorporate the provisions of 40 CFR §141.625(b) that compliance will be calculated based on the locational running annual average of quarterly samples, but if one sample would cause an MCL exceedance even if following quarters had low concentrations of TTHM or HAA5, compliance calculations may use less than four quarters of data. In addition, new §290.115(f)(1)(A) is proposed to incorporate the provisions of 40 CFR §141.625(b) that if a system fails to collect all required samples, compliance will be based on the available data.

The commission proposes to add new §290.115(f)(1)(B) to provide the starting schedule for compliance determination under the new federal rule, as provided in 40 CFR §141.620(c). New §290.115(f)(1)(B)(i) is proposed to be added to incorporate the start time for Stage 2 compliance determination for systems monitoring quarterly in accordance with 40 CFR §141.620(c)(7). New §290.115(f)(1)(B)(ii) is proposed to be added to incorporate the start time for Stage 2 compliance determination for systems where a locational running annual average would be exceeded regardless of the results of subsequent quarters, as contained in 40 CFR §141.620(c)(7). The commission proposes to add new §290.115(f)(1)(B)(iii) to incorporate the start time for Stage 2 compliance determination for systems that are required to monitor less frequently than quarterly, as contained in 40 CFR §141.620(c)(7). The commission proposes to add new §290.115(f)(1)(B)(iv) to incorporate the start time for systems monitoring annually or triennially that start monitoring quarterly in the quarter following an exceedance, as contained in 40 CFR §141.629(a)(1)(iii).

The commission proposes to add new §290.115(f)(1)(C) to contain the requirement of existing §290.113(f)(7) that if a public

water system's failure to monitor makes it impossible to determine compliance with the MCL for TTHM or HAA5, the system commits an MCL violation for the entire period. The commission proposes to add new §290.115(f)(1)(D) to incorporate the provision of 40 CFR §141.629(a)(3) that the executive director may choose to perform calculations and determine MCL exceedences in lieu of having the system report that information. The commission proposes to add new §290.115(f)(1)(E) to incorporate the provision of 40 CFR §141.600(f) establishing that initial distribution system evaluation results will not be used for the purpose of compliance determination.

The commission proposes to add new §290.115(f)(2) to contain the requirements for monitoring violations from existing §290.113 and from the new federal rule. The provisions of the federal DBP2 in 40 CFR §141.625(b) defining a monitoring violation and its period are proposed to be added to §290.115(f)(2). Additionally, the commission proposes to amend this requirement to make it clearer that violations will accrue against the system on a quarterly basis.

The commission proposes to add new §290.115(f)(3) to establish a monitoring violation related to the requirement under proposed §290.115(e)(2) that systems may be required to perform monitoring in order to evaluate distribution system operation. The commission proposes to add new §290.115(f)(4) to contain the monitoring violation requirement of existing §290.113(f)(2) relating to a system's responsibility to perform compliance monitoring. The commission proposes to add new §290.115(f)(5) to establish a reporting violation related to the requirement under proposed §290.115(e)(2) that systems submit any required operation evaluation report to the executive director. The commission proposes to add new §290.115(f)(6) to explicitly identify the type of violation resulting from failure to perform a required public notification for consistency with PNR requirements specified in publication EPA 816-R-01-010, Final State Implementation Guidance for the Public Notification Rule (PN) Rule.

The commission proposes to add new §290.115(g) to contain the existing public notification requirements of §290.113(g) and to add requirements related to the new federal rule. The commission proposes to add new §290.115(g)(1) to contain the MCL public notification requirement of existing §290.113(g)(1). The commission proposes to add new §290.115(g)(2) to contain the monitoring violation requirements of existing §290.113(g)(2). The commission proposes to add new §290.115(g)(3) to contain the provision of the federal DBP2 in 40 CFR §141.601(c)(4) that any initial distribution system evaluation compliance documents must be made available to the executive director or the public upon request. The commission proposes to add new §290.115(g)(4) to incorporate the provision of 40 CFR §141.626(b)(1) that operation evaluation reports must be made available to the executive director or the public upon request.

The commission proposes to add a new §290.116, Groundwater Corrective Actions and Treatment Techniques, to incorporate the new federal corrective action and treatment technique requirements for groundwater systems contained in the federal GWR in 40 CFR §141.403.

The commission proposes to add new §290.116(a) to identify the applicability of the corrective action and treatment technique requirements for groundwater systems as described in the federal GWR in 40 CFR §141.403(a).

The commission proposes to add new §290.116(a)(1) to identify the requirements and applicability of the treatment technique requirements for groundwater systems with existing sources not required to meet the groundwater source monitoring requirements as described in the federal GWR in 40 CFR §141.403(b).

The commission proposes to add new §290.116(a)(2) to specify the requirements and applicability of the treatment technique requirements for groundwater systems with new sources not required to meet the groundwater source monitoring requirements as described in 40 CFR §141.403(b).

The commission proposes to add new §290.116(b) to give the corrective action plan requirements for groundwater systems that have a fecal indicator positive source sample as described in the federal GWR in 40 CFR §141.403(a)(4).

The commission proposes to add new §290.116(b)(1) to establish the time frame in which a system has to consult with the state and develop a corrective action plan to address the fecal indicator positive source sample as described in 40 CFR §141.403(a)(4).

The commission proposes to add new §290.116(b)(2) to establish the time frame for public water systems to comply with the corrective action plan to address the fecal indicator positive source sample as described in 40 CFR §141.403(a)(5).

The commission proposes to add new §290.116(b)(3) to require executive director approval before any changes to the corrective action plan as described in the federal GWR in CFR §141.403(a)(5)(ii)(A).

The commission proposes to add new §290.116(b)(4) which allows the executive director to establish interim measures to protect public health in addition to the requirements of the corrective action plan as described in the federal GWR in 40 CFR §141.403(a)(5)(ii)(B).

The commission proposes to add new §290.116(b)(5) which identifies corrective action options required for corrective action plans as described in the federal GWR in 40 CFR §141.403(a)(6).

The commission proposes to add new §290.116(b)(5)(A) which identifies well disinfection and fecal indicator monitoring as a corrective action option consistent with 40 CFR §141.403(a)(4) and the special primacy requirements of 40 CFR §142.16(o)(1)(iii).

The commission proposes to add new §290.116(b)(5)(B) which identifies the corrective action of eliminating the groundwater source that was found to be fecal indicator positive as defined in 40 CFR §141.403(a)(6)(ii).

The commission proposes to add new §290.116(b)(5)(C) which identifies the corrective action of eliminating the source of fecal contamination, followed by well disinfection and source monitoring as defined in 40 CFR §141.403(a)(6)(iii).

The commission proposes to add new §290.116(b)(5)(D) which identifies the corrective action of providing 4-log treatment of viruses as defined in 40 CFR §141.403(a)(6)(iv).

The commission proposes to add new §290.116(c) requiring groundwater systems to demonstrate 4-log treatment of viruses by meeting minimum disinfection requirements as required by the federal GWR in 40 CFR §141.403(b) and maintaining consistency with disinfectant monitoring requirements of existing §290.110(c).

The commission proposes to add new §290.116(c)(1) requiring groundwater systems to monitor the performance of chemical disinfection facilities as required by 40 CFR §141.403(b) and

maintaining consistency with disinfectant monitoring requirements of existing §290.110(c).

The commission proposes to add new §290.116(c)(1)(A) to incorporate the monitoring requirements of groundwater systems serving a population greater than 3,300 that are achieving 4-log viral inactivation as required by 40 CFR §141.403(b)(3)(i)(A).

The commission proposes to add new §290.116(c)(1)(B) to incorporate the disinfectant monitoring requirements needed to achieve 4-log viral inactivation for groundwater systems serving a population less than 3,300 as required by 40 CFR §141.403(b)(3)(i)(B) consistent with the disinfectant monitoring requirements of existing §290.110(c)(1)(A).

The commission proposes to add new §290.116(c)(1)(C) to establish the requirements for disinfection contact time as it relates to the disinfectant monitoring requirements of 40 CFR §141.403(b)(3)(i) and to maintain consistency with contact time determination requirements of existing §290.110(c)(1)(B).

The commission proposes to add new §290.116(c)(1)(D) to establish the requirements for increased disinfection monitoring if appropriate levels of treatment are not achieved. This relates to the disinfectant monitoring requirements of 40 CFR §141.403(b)(3)(i) and maintains consistency with contact time determination requirements of §290.110(c)(1)(C).

The commission proposes to add new §290.116(c)(2) requiring groundwater systems to monitor the performance of UV light disinfection facilities as allowed by the federal GWR in 40 CFR §141.403(b)(3)(ii) which specifies the monitoring requirements for alternative treatment and by 40 CFR §141.720(d)(3)(i) which establishes the monitoring requirements for UV light disinfection facilities.

The commission proposes to add new §290.116(c)(3) to apply the analytical requirements for disinfectant monitoring provided in existing §290.110(d) to the groundwater systems that must meet the requirements of this section. These existing requirements apply to systems operating under normal conditions described in §290.110 and also apply to systems performing corrective action or treatment under the federal GWR, as detailed throughout proposed §290.116.

The commission proposes to add new §290.116(c)(3)(A) to specify that the analytical requirements for pH meters contained in existing §290.110(d)(1) also apply to the groundwater systems that must meet the requirements of this section.

The commission proposes to add new §290.116(c)(3)(B) to specify that the analytical requirements for temperature measurements as given in existing §290.110(d)(2) also apply to the groundwater systems that must meet the requirements of this section.

The commission proposes to add new §290.116(c)(3)(C) to specify that the analytical requirements for measuring free chlorine residual as specified in existing §290.110(d)(3) also apply to the groundwater systems that must meet the requirements of this section.

The commission proposes to add new §290.116(c)(3)(C)(i) to specify that apply the analytical requirements for measuring free chlorine residual using amperometric titration as provided in §290.110(d)(3)(A) also apply to the groundwater systems that must meet the requirements of this section.

The commission proposes to add new §290.116(c)(3)(C)(ii) to specify that the analytical requirements for measuring free chlorine residual using DPD Ferrous titration as set out in existing §290.110(d)(3)(B) also apply to the groundwater systems that must meet the requirements of this section.

The commission proposes to add new §290.116(c)(3)(C)(iii) to specify that apply the analytical requirements for measuring free chlorine residual using a DPD method using a colorimeter or spectrophotometer as described in existing §290.110(d)(3)(C) also apply to the groundwater systems that must meet the requirements of this section.

The commission proposes to add new §290.116(c)(3)(C)(iv) to specify that the analytical requirements for measuring free chlorine residual using springaldizine as given in existing §290.110(d)(3)(D) also apply to the groundwater systems that must meet the requirements of this section.

The commission proposes to add new §290.116(c)(3)(D) to specify that the analytical requirements for measuring chloramine residual given in existing §290.110(d)(4) also apply to the groundwater systems that must meet the requirements of this section.

The commission proposes to add new §290.116(c)(3)(D)(i) to specify that the analytical requirements for measuring chloramine residual using amperometric titration specified in existing §290.110(d)(4)(A) also apply to the groundwater systems that must meet the requirements of this section.

The commission proposes to add new §290.116(c)(3)(D)(ii) to specify that the analytical requirements for measuring chloramine residual using DPD Ferrous titration in existing §290.110(d)(4)(B) also apply to the groundwater systems that must meet the requirements of this section.

The commission proposes to add new §290.116(c)(3)(D)(iii) to specify that the analytical requirements for measuring chloramine residual using a DPD that uses a colorimeter or spectrophotometer of existing §290.110(d)(4)(C) and (d)(4)(C)(i) also apply to the groundwater systems that must meet the requirements of this section.

The commission proposes to add new §290.116(c)(3)(E) to specify that the analytical requirements for measuring chlorine dioxide residual as defined in existing §290.110(d)(5) also apply to the groundwater systems that must meet the requirements of this section.

The commission proposes to add new §290.116(c)(3)(E)(i) to specify that the analytical requirements for measuring chlorine dioxide residual using amperometric titration as defined in existing §290.110(d)(5)(A) also apply to the groundwater systems that must meet the requirements of this section.

The commission proposes to add new §290.116(c)(3)(E)(ii) to specify that the analytical requirements for measuring chlorine dioxide residual using Lissamine Green B as defined in the federal GWR in 40 CFR §141.74(a)(2) also apply to the groundwater systems that must meet the requirements of this section.

The commission proposes to add new §290.116(c)(3)(F) to specify that the analytical requirements for measuring ozone residual as defined in the federal GWR in 40 CFR §141.74(a)(2) also apply to the groundwater systems that must meet the requirements of this section.

The commission proposes to add new §290.116(d) establishing the reporting requirements for groundwater systems required to meet the criteria of this section as required by the federal GWR in 40 CFR §141.405.

The commission proposes to add new §290.116(d)(1) establishing the treatment reporting requirements for groundwater systems required to meet the 4-log treatment of viruses as required by 40 CFR §141.405(a)(1).

The commission proposes to add new §290.116(d)(2) establishing the notification requirements for groundwater systems achieving 4-log treatment of viruses that are not subject to raw groundwater source monitoring as required by 40 CFR §141.403(b). This paragraph also establishes the December 1, 2009 deadline for this notification.

The commission proposes to add new §290.116(d)(3) requiring groundwater systems to notify the executive director within 30 days of completing the required corrective action in accordance with the federal GWR in 40 CFR §141.405(a)(2).

The commission proposes to add new §290.116(d)(4) requiring a groundwater system that fails to conduct triggered source monitoring to provide written documentation that it was providing 4-log treatment of viruses within 30 days of the positive distribution coliform sample. This paragraph incorporates the requirements of the federal GWR in 40 CFR §141.405(a)(3).

The commission proposes to add new §290.116(e) establishing the compliance determination requirements for groundwater systems required to meet the criteria of this section as required by the federal GWR in 40 CFR §141.404.

The commission proposes to incorporate 40 CFR §141.404(b)(1) by adding new §290.116(e)(1) establishing the violation of the treatment technique requirement if a groundwater system does not complete corrective action in accordance with the executive director approved corrective action plan or interim measures required by the executive director.

The commission proposes to incorporate 40 CFR §141.404(b)(2) by adding new §290.116(e)(2) establishing the violation of the treatment technique requirement if a groundwater system is not in compliance with the executive director approved corrective action plan and schedule.

The commission proposes to incorporate 40 CFR §141.404(c) by adding new §290.116(e)(3) establishing the violation of the treatment technique requirement if a groundwater system fails to maintain at least 4-log treatment of viruses and the failure is not corrected within four hours.

The commission proposes to add new §290.116(e)(4) establishing the monitoring violation for groundwater systems that fail to conduct the required disinfectant monitoring.

The commission proposes to add new §290.116(e)(5) establishing the reporting violation for groundwater systems that fail to report the results of the required disinfectant monitoring.

The commission proposes to add a new §290.116(e)(6) establishing a public notice violation for groundwater systems that fail to issue required public notice.

The commission proposes to incorporate the federal GWR in 40 CFR §141.404(d) by adding new §290.116(f) establishing the public notice requirement for treatment technique, monitoring, or reporting violations as given in this section.

Section 290.117, Regulation of Lead and Copper, contains the action levels, sampling requirements, reporting requirements, and public education requirements for lead and copper, which can be released into drinking water under corrosive conditions.

The commission proposes to amend §290.117 to add references to elements added elsewhere as part of the incorporation of new federal requirements, to remove references to effective dates that have passed, to correct internal references, and to correct typographical and syntax errors.

In §290.117(b) the commission proposes to have initial capital letters removed within the catchline, in accordance with agency syntax protocols. The commission proposes to delete the table in §290.117(c)(8) because it contains references to start dates for lead and copper monitoring that have passed and all Texas public water systems have completed the initial monitoring referred to in that table. In §290.117(d), the commission proposes to remove initial capital letters within the catchline, in accordance with agency standards. Throughout §290.117(h) internal references to the table setting the number of water quality parameter monitoring locations are corrected from §290.117(c)(8) to §290.117(h)(1)(D). The word "title" in §290.117(h)(1)(D) is proposed to be replaced with the word "section" to meet agency syntax standards.

Section 290.118, Secondary Constituent Levels, contains the existing secondary, non-health-based standards in drinking water. The commission proposes to amend the reference to certified laboratories in §290.118(d) to reflect that authority for certification of drinking water laboratories under the Safe Drinking Water Act has passed from the (then) Texas Department of Health to the TCEQ.

Section 290.119, Analytical Procedures, contains the analytical methods that are acceptable for compliance sampling of drinking water. The commission proposes to amend §290.119(b) to update the name of the agency from "Texas Natural Resource Conservation Commission" to "Texas Commission on Environmental Quality."

Section 290.121, Monitoring Plans, contains the requirements for systems to use a monitoring plan to describe when and where they take compliance samples.

The commission proposes to update the internal references in §290.121(b)(1) to reflect inclusion of the new federal rule requirements. The commission proposes new §290.121(b)(6) to add a reference to the source water monitoring plans required under the federal GWR in 40 CFR §141.402(a)(2)(ii). The commission proposes to add new §290.121(b)(7) to add a reference to initial distribution system evaluation plans under the federal DBP2 in 40 CFR §141.600(1). The commission proposes new §290.121(b)(8) to add a reference to the raw water monitoring plans required under the federal LT2 in 40 CFR §141.703(f). The commission proposes to remove outdated references to effective dates starting in 2001, 2003, and 2004 from existing §290.121(c)(1), (c)(2), and (c)(3) and proposes to renumber resulting paragraphs. The commission proposes to update §290.121(d)(1) specify that a reporting violation occurs not only when a system fails to submit a monitoring plan upon request, but also if it is required to submit its monitoring plan because it treats surface water or groundwater under the direct influence of surface water.

Section 290.122, Public Notification, contains public notification requirements for systems to follow when their drinking water fails to meet one of the drinking water standards.

The commission proposes to amend §290.122 to add references to elements added elsewhere as part of the incorporation of new federal requirements, to correct internal references, and to correct typographical and syntax errors.

The commission proposes to amend §290.122(a)(1)(B) by removing capitalization of the words from the term "Nephelometric Turbidity Unit" and to incorporate public notification requirements of the federal PNR. The commission proposes to add new §290.122(a)(1)(B)(i) to contain the requirement of existing §290.122(a)(1)(B) regarding notification when combined filter effluent turbidity is over 5.0 NTU. The commission proposes to add new §290.122(a)(1)(B)(ii) to contain the requirement of the federal PNR in 40 CFR §141.202(a)(6) for notification when combined filter effluent turbidity is over 1.0 NTU at a membrane treatment plant. The commission proposes to add new §290.122(a)(1)(B)(iii) to contain the requirement of the federal PNR in 40 CFR §141.202(a)(6) for notification after consultation with the executive director when combined filter effluent turbidity is over 1.0 NTU at a treatment plant using technology other than membranes. The commission proposes to add new §290.122(a)(1)(B)(iv) to contain the requirement of the federal PNR in 40 CFR §141.202(a)(6) for notification of customers in cases where a system fails to consult with the executive director when combined filter effluent turbidity is over 1.0 NTU at a treatment plant using technology other than membranes.

The commission proposes to add new §290.122(a)(1)(F) to incorporate the provisions of the federal GWR in 40 CFR §141.202(a)(8) requiring groundwater systems to notify the public of detection of *E. coli* or other fecal indicators in raw groundwater source samples as an acute health violation. The subsequent paragraph is re-alphabetized to maintain alphabetical order.

The commission proposes to add new §290.122(b)(1)(C) to incorporate the provisions of the federal GWR in 40 CFR §141.403(a) requiring groundwater systems to notify the public of failure to take corrective action or failure to maintain at least 4-log treatment of viruses before or at the first customer. The subsequent paragraphs are re-alphabetized to maintain alphabetical order.

The commission proposes to add new §290.122(b)(1)(D) to incorporate the provision of the federal LT2 in 40 CFR §141.211(a) that a system must notify customers if they fail to collect three months of required *Cryptosporidium* data.

The commission proposes to add new §290.122(d)(3)(C) to incorporate the provisions of the federal LT2 in 40 CFR §141.211(d)(1) requiring surface water systems to include the mandatory contaminant-specific language in addition to any language required by the executive director, when notifying the public of repeated failure to conduct surface water source monitoring for *Cryptosporidium*.

The commission renumbers existing §290.122(d)(3)(C) to §290.122(d)(3)(D).

The commission proposes to amend §290.122(f) to incorporate the provisions of the federal PNR 40 CFR §141.31(d) requiring a signed certificate of delivery with proof of public notification submitted to the executive director.

Subchapter H: Consumer Confidence Reports

Subchapter H contains the requirements for community water systems to deliver a report of drinking water quality, called a Consumer Confidence Report, to all of their customers annually. The commission proposes to amend Subchapter H, Consumer Confidence Reports, to incorporate provisions of the federal GWR, LT2, and GWR rules. Since 1998, all public water systems have been required to send their customers and annual report of drinking water quality called the Consumer Confidence Report. All new regulations from EPA, such as the GWR, LT2, and DBP2, contain provisions for how to notify customers regarding any new contaminants or new ways of calculating compliance. The commission also proposes administrative changes throughout these sections to be consistent with *Texas Register* requirements and with Subchapter D and Subchapter F of Chapter 290.

Section 290.272, Content of the Report, describes the required contents of the consumer confidence reports.

The commission proposes to add new §290.272(c)(4)(D)(iii) requiring systems to include the highest locational running average and range of individual sample results for total trihalomethanes and haloacetic acids for all monitoring locations expressed in the same units as the MCL, consistent with the federal DBP2 in 40 CFR §141.53(d)(4)(iv)(B).

The commission proposes to add new §290.272(e)(7) to incorporate the provisions of the federal DBP2 in 40 CFR §141.153(d)(4)(iv)(c) requiring systems to include individual sample results in calculations for the initial distribution system evaluation to be reported in the annual consumer confidence report.

The commission proposes to add new §290.272(g)(7) to incorporate the provisions of the federal GWR in 40 CFR §141.53(h)(6)(i) require inclusion in the consumer confidence report of any fecal indicator-positive groundwater source sample that is not invalidated by the executive director.

The commission proposes to add new §290.272(g)(7)(A) to incorporate the provisions of the federal GWR in 40 CFR §141.53(h)(6)(i)(A) that a system must notify its customers of the source of any fecal contamination, if that source is known, and notify them of the dates that the fecal indicator was detected in the source. The commission proposes to add new §290.272(g)(7)(B) to incorporate the provisions of the federal GWR in 40 CFR §141.53(h)(6)(i)(B) that a system must notify its customers of any actions that have been taken to address the fecal contamination, and the date of such action. The commission proposes to add new §290.272(g)(7)(C) to incorporate the provisions of the federal GWR in 40 CFR §141.53(h)(6)(i)(C) that a system must notify its customers of the plan to address any fecal contamination and any progress that has been made towards addressing the contamination. The commission proposes to add new §290.272(g)(7)(D) to incorporate the provisions of the federal GWR in 40 CFR §141.53(h)(6)(i)(D) that a system must notify its customers using the mandatory health effects language.

The commission proposes to add new §290.272(g)(8) to incorporate the provisions of the federal GWR in 40 CFR §141.53(h)(6)(i) to require the consumer confidence report to describe any significant deficiency. The commission proposes to add new §290.272(g)(8)(A) to incorporate the provisions of the federal GWR in 40 CFR §141.53(h)(6)(i)(A) that a system must notify its customers of any significant deficiency and the date that it was identified. The commission proposes to add new §290.272(g)(8)(B) to incorporate the provisions of the federal GWR in 40 CFR §141.53(h)(6)(i)(B) that a system must notify its customers of their plan for addressing any significant deficiency. The commission proposes to add new §290.272(g)(8)(C) to incorporate the provisions of the federal GWR in 40 CFR §141.53(h)(6)(ii) that a system must notify its customers of any significant deficiency that was corrected and the date that it

was corrected. Significant deficiencies are part of the special primacy conditions for the state of 40 CFR §142. This requires states to define at least one significant deficiency related to each of the eight sanitary survey elements: source, treatment, distribution, storage facilities, pressure maintenance facilities, data reporting, system management, and operator compliance with licensing.

Section 290.273, Required Additional Health Information, provides the required additional health information that must be included in consumer confidence reports.

The commission proposes to amend §290.273(b) to remove the transition level and language for reporting arsenic levels consistent with the requirements of 40 CFR §141.154 because applicability has passed.

Section 290.275, Appendices A - D, provides the mandatory language used to explain contaminant detections and violations in the consumer confidence reports.

Section §290.275(1) is Figure: 30 TAC §290.275(1), Appendix A--Converting Maximum Contaminant Level Compliance Values for Consumer Confidence Reports. The commission proposes to amend §290.275(1) to insert the language of 40 CFR Appendix A to Subpart O relating to the maximum contaminant compliance value for fecal indicators of drinking water as number 3. Subsequent table elements are proposed to be renumbered to maintain the table sequence.

The commission proposes to remove footnote 1 of §290.275(1) related to the effective date of the arsenic MCL since this date has passed.

Section 290.275(2) is Figure: 30 TAC §290.275(2), Appendix B--Sources of Regulated Contaminants. The commission proposes to amend §290.275(2) to insert the language of the federal GWR in 40 CFR Appendix A to Subpart O relating to the source of fecal indicators of drinking water as number 3. Subsequent table elements are proposed to be renumbered to maintain the table sequence.

The commission proposes to remove footnote 1 of §290.275(2) related to the effective date of the arsenic MCL which has passed.

Section 290.275(3) is Figure: 30 TAC §290.275(3), Appendix C--Health Effects Language. The commission proposes to amend §290.275(3) to insert the health effects language of the federal GWR in 40 CFR Subpart O, Appendix A relating to the mandatory health effects language for fecal indicators in drinking water as number 3. Subsequent table elements are proposed to be renumbered accordingly to maintain the table sequence.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, determined that, for the first five-year period the proposed rules are in effect, fiscal implications, which may be significant, are anticipated for the agency and other units of state and local governments as a result of administration or enforcement of the proposed rules. The proposed rules would incorporate recent federal water regulations for PWSs and are necessary in order for the state to maintain primacy for regulating PWSs. All implementation costs incurred by all affected parties are due to compliance with federal mandates. For purposes of this fiscal note, all cost analyses, for all parties, have been based on EPA estimates.

Some of the proposed rules are not anticipated to have a fiscal impact on any regulated party. Specifically, the changes to the federally-mandated DBP1, PNR, and TCR are not expected to have any financial impact on affected parties. The changes to the DBP1 rule allow the TCEQ to effectively distinguish between the current requirements and the DBP2 requirements that will take effect in several years but do not change any of the technical requirements of the existing DBP1 rule. The changes to the PNR reduce the time allowed for public water systems to notify the TCEQ of an acute violation but do not change the notification requirements for customers. The changes in the TCR requirements reflect that the agency uses the federally-mandated compliance calculation and have no regulatory impact on public water systems.

In addition, the requirement for public water systems to maintain internal procedures for notifying the executive director in the event of a threat to the security of the water supply does not pose any significant fiscal impact because the rules give the water system wide latitude to develop their system specific plan and do not require the publication or distribution of the plan.

However, compliance with the GWR, LT2 and DBP2 is anticipated to have fiscal implications for the agency and regulated parties.

The GWR, LT2 and DBP2 federal rules are anticipated to increase costs to the agency by varying degrees during the first five years of implementation, and compliance costs are estimated to total as much as $7 million during this period. If current funding is not adequate to implement the proposed rules, the agency may need to request additional appropriation authority for the 2010 - 2011 biennium in order to better implement the rules' provisions.

Fiscal implications are also anticipated for other state agencies that own or operate drinking water systems. Staff estimates that 146 PWSs are owned by other state agencies, including Texas Parks and Wildlife, Texas Department of Criminal Justice, and Texas Department of Transportation. The GWR is expected to affect 115 PWSs operated by state agencies, and LT2 and DBP2 are expected to affect 10 and 46 state agency PWSs respectively. Total estimated costs for these state agencies during the first five years of implementation may be as much as $713,000.

The primary purpose of the proposed rules is to incorporate federal regulations pertaining to the safety of drinking water from groundwater and surface water sources. EPA has adopted the GWR, which seeks to provide greater protection from pathogens to customers of PWSs that provide drinking water, in part or in whole, from sources of groundwater. EPA has also adopted LT2, which provides increased protection from the protozoan *Cryptosporidium* found in surface water, and DBP2, which seeks to provide public drinking water customers more equitable protection from the risks of disinfection byproducts.

The proposed rules will require the agency to process much greater numbers of water samples, develop and update data management systems, review and approve a greater number of reports, develop and provide training to agency and PWSs' staffs, increase monitoring, and perform other compliance tasks. Costs to implement the proposed rules will vary from year to year depending on federal time frames for implementation of each federal regulation, the time required to amend and implement operating procedures and monitoring requirements, and the time required to train agency staff and PWSs' staff on the new rule requirements. The WSD may find it necessary to implement ef-

ficiencies, increase contract activities, and/or obtain additional resources. Details of agency costs for each part of the proposed rules were based upon EPA estimates and can be seen in the following table:

Figure 1: 30 TAC Chapter 290--Preamble

Estimated costs to other state agencies are also based on EPA estimates and are detailed in the table below:

Figure 2: 30 TAC Chapter 290--Preamble

Full implementation of the GWR is not scheduled to take place until December 1, 2009. Both the LT2 and DBP2 are not scheduled for full implementation until October 1, 2014. Implementation costs vary each year depending on federal timelines in the different rules regarding compliance. Although some of the federal implementation dates extend beyond the five year analysis of the proposed rules, staff has seen that some PWSs may voluntarily correct contaminant or disinfectant levels immediately to the levels required by these federal regulations when sampling indicates corrections are needed. This voluntary action may accelerate the level of costs, but it may also accelerate any estimated cost benefits in public health costs.

The proposed rules are also expected to increase costs for PWSs owned by local governments and businesses. Staff estimates that there are as many as 6,692 PWSs in the state. Of these, 2,912 are owned or operated by local governments and as many as 3,525 PWSs are owned or operated by businesses. If a PWS is close to non-viability or has poor source water quality, implementation costs could be significant.

Total cost estimates to comply with the Stage 2 Drinking Water Rules will vary each year for each rule and depend on federal compliance timelines, size of customer base, monitoring requirements, and possible treatment requirements. Estimated costs for local governments thought to be affected by each rule are based on EPA estimates and are shown in the following table:

Figure 3: 30 TAC Chapter 290--Preamble

PWSs owned by local governments have options to finance compliance costs for these rules. Local governments may be eligible for financial assistance. It is possible that PWSs owned by local governments will not pass any compliance costs on to their customer base. Any increase in costs incurred by local government PWSs is anticipated to be similar to estimates provided by EPA for the federal rules. EPA estimates that the mean annual household cost increase for the GWR ranges from $0.21 to $16.54 nationwide depending on system size, with the national mean cost for all systems using groundwater estimated to be $0.51 per household. EPA estimates that the mean cost to a household would increase $2.10 per year for LT2 compliance. EPA also estimates that for DBP2 compliance the mean cost increase per household is $0.62 per year.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed new rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be greater protection of public health and lower rates of illness and fatalities caused by contaminants in public drinking water. EPA estimates that there will be significant savings due to decreases in lost wages and in medical costs for treating waterborne illnesses. As mentioned earlier, most savings are projected by EPA to be experienced in future years beyond the first five years the proposed rules are implemented. Based on EPA projections, staff estimates that there will be cost savings during the first five years of rule implementation, but long term cost savings due to decreased illnesses associated with drinking water are projected to be even more significant.

Business-owned PWSs may own or operate a community water system or a noncommunity water system. A community water system is defined as a PWS which has a potential to serve at least 15 residential service connections on a year-round basis or serves at least 25 residents on a year-round basis. A noncommunity water system is any water system that is not a community system. There are two different types of noncommunity water systems. A nontransient noncommunity water system is a public water system that is not a community water system and regularly serves at least 25 of the same persons at least six months out of the year. A transient noncommunity water system is a public water system that is not a community water system and serves at least 25 persons at least 60 days out of the year, yet by its characteristics, does not meet the definition of a nontransient noncommunity water system.

An estimated 1,622 of the business-owned PWSs serve noncommunity customers. These businesses-owned PWSs are expected to recover compliance costs by charging more for services or products. The amount of increase is not known, but it is expected to have minimal fiscal implications for the market served and would depend on the size of the transient customer base, the type of service, or the number of products available for purchase.

Business-owned PWSs that own or operate community PWSs also have options to recover compliance costs through grant funding, but they could also pass these costs on to their customer base. There are an estimated 1,903 of these PWSs in the state. The increase per household is estimated to be the same as the estimated increase that could be seen in PWSs owned or operated by local governments. EPA estimates that the mean annual household cost increase for the GWR ranges from $0.21 to $16.54 nationwide depending on system size, with the national mean cost for all systems using groundwater estimated to be $0.51 per household. EPA estimates that the mean cost to a household would increase $2.10 per year for LT2 compliance. EPA also estimates that for DBP2 compliance the mean cost increase per household is $0.62 per year. If compliance costs are too high for the customer base to bear, the financial stability of these business-owned PWSs would be threatened, and they may have to seek financial, managerial, and /or technical assistance.

Most businesses that are thought to be affected by the proposed rules serve smaller populations and have less revenue than PWSs owned or operated by local governments. Therefore, this fiscal analysis assumes that business owned PWSs serving fewer than 50,000 customers will be small or micro-businesses. Please see the section called SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT for an analysis of the cost implications of the proposed rules on those businesses.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Adverse fiscal implications are anticipated for some small or micro-businesses as a result of the proposed rules. It is anticipated that any cost increases to comply with the proposed rules may be recovered by charging a higher price to PWS customers or by obtaining financial assistance. If a business-owned PWS becomes non-viable and major corrective action is needed to com-

ply with the rules, the business may have to consolidate with neighboring business-owned PWSs or local governments.

Of the 3,299 business-owned PWSs that might be affected by the GWR, 17 are thought to belong to small businesses and 3,282 are thought to be micro-businesses. Of the 36 business-owned PWSs that might be affected by the LT2 rule, one is thought to be owned or operated by a small business and 35 are thought to be owned or operated by a micro-business. The DBP2 rule is projected to affect 23 small businesses and 2,514 micro-businesses.

Based on EPA estimates, the statewide costs to small and micro-businesses are shown in the following table:

Figure 4: 30 TAC Chapter 290--Preamble

A small business is defined as having fewer than 100 employees or less than $1 million in annual gross receipts. A micro-business is defined as having no more than 20 employees. Although EPA estimates compliance costs based on the number of customers served instead of number of employees or gross receipts, staff has assumed that systems with smaller populations will usually have fewer employees for purposes of this fiscal note. The cost per employee for a small and micro-businesses for the proposed rules are based on EPA estimates and are shown in the following tables.

Figure 5: 30 TAC Chapter 290--Preamble

Figure 6: 30 TAC Chapter 290--Preamble

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a "major environmental rule" as defined by that statute. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rulemaking does not meet the statutory definition of a "major environmental rule" because, while the rule is intended to reduce risks to human health from environmental exposure, it does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the proposed amendments is to incorporate recent changes in the federal drinking water regulations in order to maintain the state's primary enforcement responsibility with regard to drinking water. This is accomplished by enacting rules no less stringent than the federal regulations and adopting adequate procedures for implementation and enforcement of those rules. The proposed amendments require drinking water systems to meet the same regulatory standards set forth in the federal rules, while providing alternative approaches to compliance based in part on stakeholder input and taking into account special considerations related to this state's particular source water conditions. The federal regulations that would be implemented through the proposed amendments are designed to reduce risks to human health from environmental exposure by limiting public exposure to waterborne disease and enhancing the public's awareness of contamination of its drinking water.

This rulemaking does not meet the statutory definition of a "major environmental rule" because the proposed amendments would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the proposed amendments will be significant with respect to the economy as a whole; therefore, the proposed amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

The fiscal impact of the amendments proposed to incorporate the federal DBP2, GWR, and LT2 are outlined in the Fiscal Note of this preamble, and although the proposed amendments may increase costs for some retail public utilities, the additional costs are not expected to adversely affect this sector of the economy.

The proposed amendments to §290.46 resulting from changes made to the THSC during the 79th Regular Session by SB 9 require a public water system to maintain internal procedures to notify the executive director in the event of a threat to the security of the water supply. This proposed provision gives the water supply system wide latitude in how it chooses to comply with the rule; it does not require the system to incur any costs in the development of this plan, nor does it require publication or distribution of the plan. Therefore, development and maintenance of the plan will result in little or no fiscal impact to a water supply system or its customers.

The proposed amendments resulting from the federal TCR and PNR will have no fiscal impact on the regulated community or its customers. The language of these rules is being amended to more accurately reflect the federal rules. Because the agency's current methods of implementation comply with the federal rules, no changes to state implementation will result from the amendments. The revisions to the PNR are required by EPA to maintain primacy.

Existing §290.113, Disinfection By-products (TTHM and HAA5), contains the standards for disinfection by-products resulting from DBP1 promulgated by the EPA in December 1998. This rule package proposes amendments that would add the requirements of DBP2 promulgated by the EPA in January 2006. Amendments to DBP1 proposed by this rulemaking would change references so that the Chapter 290 rules distinguish between the DBP1 and DBP2 rules. Because these amendments result in no changes in implementation, they will result in no fiscal impact to the regulated community.

This rulemaking does not qualify as a major environmental rule because it will not have an adverse economic effect. Additionally, this rulemaking does not meet the definition of a major environmental rule because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Section 2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state

and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for treatment of water used in public water systems and is proposed to be consistent with federal rules; 2) does not exceed the requirements of state law under Texas Health and Safety Code, Chapter 341, Subchapter C; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement any state and federal program on treatment of water used in public water systems, but rather is proposed to be consistent with federal rules in order to allow the state to maintain its authority to implement the federal Safe Drinking Water Act, pursuant to the agreements between the EPA and TCEQ; and 4) is not proposed solely under the general powers of the agency, but rather specifically under Texas Health and Safety Code §341.031, which allows the commission to adopt and enforce rules to implement the federal Safe Drinking Water Act, as well as the other general powers of the agency.

The commission invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKING IMPACT ASSESSMENT

The commission evaluated the proposed amendments to Chapter 290 and performed an assessment of whether the amendments would constitute a taking under Chapter 2007 of the Texas Government Code. The primary purposes of the proposed amendments are to incorporate federal regulations related to: 1) protecting public drinking water consumers from the risks of disinfectant byproducts more equitably than previous rules in response to the National Primary Drinking Water Regulations: DBP2 published by the EPA in the January 4, 2006 issue of the *Federal Register*; 2) providing increased public health protection from the protozoan *Cryptosporidium* in drinking water in response to the National Primary Drinking Water Regulations: LT2 published by the EPA in the January 5, 2006 issue of the *Federal Register*; and 3) providing greater protection from pathogens for customers of public water systems that operate wells through new monitoring, reporting, and compliance requirements, in response to National Primary Drinking Water Regulations: GWR, published in the November 8, 2006 issue of the *Federal Register*. Additional amendments are proposed to: 1) require by rule certification of public notice in order to gain primacy over the PNR adopted by the TCEQ in 2002; 2) address security issues at public water systems through rulemaking related to policy and response planning in response to Senate Bill 9, 79th regular Texas legislative session (2005); 3) update system design requirements to reflect current technology; 4) add requirements for consumer confidence reports relating to the new rules; 5) ensure consistency with the existing federal TCR and DBP1; and 6) correct any typographical errors, formatting mistakes, incorrect references, or citation changes identified through review of the rule language and delete references to compliance initiation dates that have already passed and make other non-substantive changes. The proposed amendments would substantially advance these purposes by amending notice, reporting, and licensing requirements and adding new technology options to Chapter 290, 30 Texas Administrative Code, and making non-substantive changes.

The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to these proposed rules because this is an action that is reasonably taken to fulfill an obligation mandated by federal law, which is exempt under Texas Government Code, §2007.003(b)(4). In order to maintain primacy over public drinking water, the state must enact rules no less stringent than the federal drinking water regulations as required by 40 CFR §142.10. Further, Texas Government Code, Chapter 2007 does not apply to these proposed rules because this is an action that is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and that does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13). The proposed rules are designed to ensure that drinking water for public consumption is treated and monitored sufficiently to minimize exposure to waterborne disease. The proposed rules are designed to accomplish this goal without imposing unnecessary burdens.

Promulgation and enforcement of the proposed amendments would constitute neither a statutory nor a constitutional taking of private real property. There are no burdens imposed on private real property under this rule because the proposed amendments neither relate to, nor have any impact on the use or enjoyment of private real property, and there would be no reduction in property value as a result of this rule. The rule requires public drinking water system to comply with drinking water standards protective of human health and the environment and brings those standards in concurrence with those of the corresponding federal regulations. Therefore, the proposed rules would not constitute a taking under Texas Government Code Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on August 30, 2007, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Patricia Duron, Office of Legal Services, at (512) 239-6087. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Duron, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be

submitted at *http://www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments submitted via the eComments system. All comments should reference Rule Project Number 2006-045-290-PR. The comment period closes September 10, 2007. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Alicia Diehl, Water Supply Division, at (512) 239-1626.

SUBCHAPTER D. RULES AND REGULATIONS FOR PUBLIC WATER SYSTEMS

30 TAC §§290.38, 290.39, 290.41, 290.42, 290.44 - 290.47

STATUTORY AUTHORITY

These amendments are proposed under Texas Water Code (TWC) §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; and Texas Health and Safety Code (THSC) §341.031, which allows the commission to adopt rules to implement the federal Safe Drinking Water Act, 42 United States Code §§300f to 300j-26; and THSC §341.0315, which requires public water systems to comply with commission rules adopted to ensure the supply of safe drinking water.

The proposed amendments implement TWC §§5.102, 5.103, 5.105, THSC §341.031, and §341.0315.

§290.38. Definitions.

The following words and terms, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise. If a word or term used in this chapter is not contained in the following list, its definition shall be as shown in Title 40 Code of Federal Regulations (CFR) §141.2. Other technical terms used shall have the meanings or definitions listed in the latest edition of *The Drinking Water Dictionary,* prepared by the American Water Works Association.

(1) - (7) (No change.)

(8) Bag Filter--Pressure-driven separation device that removes particulate matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed of a non-rigid, fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to the outside.

(9) Cartridge filter--Pressure-driven separation device that removes particulate matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed as rigid or semi-rigid, self-supporting filter elements housed in pressure vessels in which flow is from the outside of the cartridge to the inside.

(10) [~~(8)~~] Certified laboratory--A laboratory certified by the commission to analyze water samples to determine their compliance with maximum allowable constituent levels.

(11) Challenge test--A study conducted to determine the removal efficiency (log removal value) of a device for a particular organism, particulate, or surrogate.

(12) Chemical disinfectant--Any oxidant, including but not limited to chlorine, chlorine dioxide, chloramines, and ozone added to the water in any part of the treatment or distribution process, that is intended to kill or inactivate pathogenic microorganisms.

(13) [~~(9)~~] Community water system--A public water system which has a potential to serve at least 15 residential service connections on a year-round basis or serves at least 25 residents on a year-round basis.

(14) [~~(10)~~] Connection--A single family residential unit or each commercial or industrial establishment to which drinking water is supplied from the system. As an example, the number of service connections in an apartment complex would be equal to the number of individual apartment units. When enough data is not available to accurately determine the number of connections to be served or being served, the population served divided by three will be used as the number of connections for calculating system capacity requirements. Conversely, if only the number of connections is known, the connection total multiplied by three will be the number used for population served. For the purposes of this definition, a dwelling or business which is connected to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection if:

(A) the water is used exclusively for purposes other than those defined as human consumption (see human consumption);

(B) the executive director determines that alternative water to achieve the equivalent level of public health protection provided by the drinking water standards is provided for residential or similar human consumption, including, but not limited to, drinking and cooking; or

(C) the executive director determines that the water provided for residential or similar human consumption is centrally treated or is treated at the point of entry by a provider, a pass through entity, or the user to achieve the equivalent level of protection provided by the drinking water standards.

(15) [~~(11)~~] Contamination--The presence of any foreign substance (organic, inorganic, radiological or biological) in water which tends to degrade its quality so as to constitute a health hazard or impair the usefulness of the water.

(16) [~~(12)~~] Cross-connection--A physical connection between a public water system and either another supply of unknown or questionable quality, any source which may contain contaminating or polluting substances, or any source of water treated to a lesser degree in the treatment process.

(17) Direct integrity test--A physical test applied to a membrane unit in order to identify and isolate integrity breaches/leaks that could result in contamination of the filtrate.

(18) [~~(13)~~] Disinfectant--A chemical or a treatment which is intended to kill or inactivate pathogenic microorganisms in water. [~~Any oxidant, including but not limited to chlorine, chlorine dioxide, chloramines, and ozone added to the water in any part of the treatment or distribution process, that is intended to kill or inactivate pathogenic microorganisms.~~]

(19) [~~(14)~~] Disinfection--A process which inactivates pathogenic organisms in the water by chemical oxidants or equivalent agents.

(20) [~~(15)~~] Distribution system--A system of pipes that conveys potable water from a treatment plant to the consumers. The term includes pump stations, ground and elevated storage tanks, potable water mains, and potable water service lines and all associated valves, fittings, and meters, but excludes potable water customer service lines.

(21) [~~(16)~~] Drinking water--All water distributed by any agency or individual, public or private, for the purpose of human consumption or which may be used in the preparation of foods or beverages

or for the cleaning of any utensil or article used in the course of preparation or consumption of food or beverages for human beings. The term "Drinking Water" shall also include all water supplied for human consumption or used by any institution catering to the public.

(22) [~~(17)~~] Drinking water standards--The commission rules covering drinking water standards in Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems).

(23) [~~(18)~~] Elevated storage capacity--That portion of water which can be stored at least 80 feet above the highest service connection in the pressure plane served by the storage tank.

(24) [~~(19)~~] Emergency power--Either mechanical power or electric generators which can enable the system to provide water under pressure to the distribution system in the event of a local power failure. With the approval of the executive director, dual primary electric service may be considered as emergency power in areas which are not subject to large scale power outages due to natural disasters.

(25) Filtrate--The water produced from a filtration process; typically used to describe the water produced by filter processes such as membranes.

(26) [~~(20)~~] Groundwater--Any water that is located beneath the surface of the ground and is not under the direct influence of surface water.

(27) [~~(21)~~] Groundwater under the direct influence of surface water--Any water beneath the surface of the ground with:

(A) significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia*or *Cryptosporidium*; or

(B) significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions.

(28) [~~(22)~~] Health hazard--A cross-connection, potential contamination hazard, or other situation involving any substance that can cause death, illness, spread of disease, or has a high probability of causing such effects if introduced into the potable drinking water supply.

(29) [~~(23)~~] Human consumption--Uses by humans in which water can be ingested into or absorbed by the human body. Examples of these uses include, but are not limited to drinking, cooking, brushing teeth, bathing, washing hands, washing dishes, and preparing foods.

(30) Indirect integrity monitoring--The monitoring of some aspect of filtrate water quality, such as turbidity, that is indicative of the removal of particulate matter.

(31) Innovative/alternate treatment--Any treatment process that does not have specific design requirements in §290.42(a) - (f) of this title (relating to Water Treatment). For example, the adjustment of fluoride ion content, special treatment for metals, iron, manganese, organic and inorganic contaminant reduction, special methods for taste and odor control, demineralization, corrosion control processes, membrane filtration, bag/cartridge filters, ozone, chlorine dioxide, Ultraviolet (UV) light disinfection, and other treatment processes.

(32) [~~(24)~~] Interconnection--A physical connection between two public water supply systems.

(33) [~~(25)~~] Intruder-resistant fence--A fence six feet or greater in height, constructed of wood, concrete, masonry, or metal with three strands of barbed wire extending outward from the top of the fence at a 45 degree angle with the smooth side of the fence on the outside wall. In lieu of the barbed wire, the fence must be eight feet in height. The fence must be in good repair and close enough to surface grade to prevent intruder passage.

(34) [~~(26)~~] L/d ratio--The dimensionless value that is obtained by dividing the length (depth) of a granular media filter bed by the weighted effective diameter "d" of the filter media. The weighted effective diameter of the media is calculated based on the percentage of the total bed depth contributed by each media layer.

(35) [~~(27)~~] Licensed professional engineer--An engineer who maintains a current license through the Texas Board of Professional Engineers in accordance with its requirements for professional practice.

(36) Log removal value (LRV)--Removal efficiency for a target organism, particulate, or surrogate expressed as $\log_{10}$ (i.e., $\log_{10}$ (feed concentration) - $\log_{10}$ (filtrate concentration).

(37) [~~(28)~~] Maximum daily demand--In the absence of verified historical data or in cases where a public water system has imposed mandatory water use restrictions within the past 36 months, maximum daily demand means 2.4 times the average daily demand of the system.

(38) [~~(29)~~] Maximum contaminant level (MCL)--The MCL for a specific contaminant is defined in the section relating to that contaminant.

(39) Membrane filtration--A pressure or vacuum driven separation process in which particulate matter larger than one micrometer is rejected by an engineered barrier, primarily through a size-exclusion mechanism, and which has a measurable removal efficiency of a target organism that can be verified through the application of a direct integrity test; includes the following common membrane classifications microfiltration (MF), ultrafiltration (UF), nanofiltration (NF), and reverse osmosis (RO), as well as any "membrane cartridge filtration" (MCF) device that satisfies this definition.

(40) Membrane $LRV_{C\text{-}Test}$--The number that reflects the removal efficiency of the membrane filtration process demonstrated during challenge testing. The value is based on the entire set of LRVs obtained during challenge testing, with one representative LRV established per module tested.

(41) Membrane module--The smallest component of a membrane unit in which a specific membrane surface area is housed in a device with a filtrate outlet structure.

(42) Membrane sensitivity--The maximum log removal value (LRV) that can be reliably verified by a direct integrity test.

(43) Membrane unit--A group of membrane modules that share common valving, which allows the unit to be isolated from the rest of the system for the purpose of integrity testing or other maintenance.

(44) [~~(30)~~] Milligrams per liter (mg/L)--A measure of concentration, equivalent to and replacing parts per million in the case of dilute solutions.

(45) [~~(31)~~] Monthly reports of water works operations--The daily record of data relating to the operation of the system facilities compiled in a monthly report.

(46) [~~(32)~~] National Fire Protection Association (NFPA) standards--The standards of the NFPA, 1 Batterymarch Park, Quincy, Massachusetts, 02269-9101.

(47) [~~(33)~~] National Sanitation Foundation (NSF)--The NSF or reference to the listings developed by the foundation, P.O. Box 1468, Ann Arbor, Michigan 48106.

(48) [~~(34)~~] Noncommunity water system--Any public water system which is not a community system.

(49) [~~(35)~~] Nonhealth hazard--A cross-connection, potential contamination hazard, or other situation involving any substance that generally will not be a health hazard, but will constitute a nuisance, or be aesthetically objectionable, if introduced into the public water supply.

(50) [~~(36)~~] Nontransient noncommunity water system--A public water system that is not a community water system and regularly serves at least 25 of the same persons at least six months out of the year.

(51) [~~(37)~~] psi--Pounds per square inch.

(52) [~~(38)~~] Peak hourly demand--In the absence of verified historical data, peak hourly demand means 1.25 times the maximum daily demand (prorated to an hourly rate) if a public water supply meets the commission's minimum requirements for elevated storage capacity and 1.85 times the maximum daily demand (prorated to an hourly rate) if the system uses pressure tanks or fails to meet the commission's minimum elevated storage capacity requirement.

(53) [~~(39)~~] Plumbing inspector--Any person employed by a political subdivision for the purpose of inspecting plumbing work and installations in connection with health and safety laws and ordinances, who has no financial or advisory interest in any plumbing company, and who has successfully fulfilled the examinations and requirements of the Texas State Board of Plumbing Examiners.

(54) [~~(40)~~] Plumbing ordinance--A set of rules governing plumbing practices which is at least as stringent and comprehensive as one of the following nationally recognized codes:

(A) the International Plumbing Code; or

(B) the Uniform Plumbing Code.

(55) [~~(41)~~] Potable water customer service line--The sections of potable water pipe between the customer's meter and the customer's point of use.

(56) [~~(42)~~] Potable water service line--The section of pipe between the potable water main to the customer's side of the water meter. In cases where no customer water meter exists, it is the section of pipe that is under the ownership and control of the public water system.

(57) [~~(43)~~] Potable water main--A pipe or enclosed constructed conveyance operated by a public water system which is used for the transmission or distribution of drinking water to a potable water service line.

(58) [~~(44)~~] Potential contamination hazard--A condition which, by its location, piping or configuration, has a reasonable probability of being used incorrectly, through carelessness, ignorance, or negligence, to create or cause to be created a backflow condition by which contamination can be introduced into the water supply. Examples of potential contamination hazards are:

(A) bypass arrangements;

(B) jumper connections;

(C) removable sections or spools; and

(D) swivel or changeover assemblies.

(59) Process control duties--Activities that directly affect the potability of public drinking water, including: making decisions regarding the day-to-day operations and maintenance of public water system production and distribution; maintaining system pressures; determining the adequacy of disinfection and disinfection procedures; taking routine microbiological samples; taking chlorine residuals and microbiological samples after repairs or installation of lines or appurtenances; and operating chemical feed systems, filtration, disinfection, or pressure maintenance equipment; or performing other duties approved by the executive director.

(60) [~~(45)~~] Public drinking water program--Agency staff designated by the executive director to administer the Safe Drinking Water Act and state statutes related to the regulation of public drinking water. Any report required to be submitted in this chapter to the executive director must be submitted to the Texas Commission on Environmental Quality, Water Supply Division, MC 155, P.O. Box 13087, Austin, Texas 78711-3087.

(61) [~~(46)~~] Public health engineering practices--Requirements in this subchapter or guidelines promulgated by the executive director.

(62) [~~(47)~~] Public water system--A system for the provision to the public of water for human consumption through pipes or other constructed conveyances, which includes all uses described under the definition for drinking water. Such a system must have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. This term includes; any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or greater at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if he lives in, uses as his place of employment, or works in a place to which drinking water is supplied from the system.

(63) Quality Control Release Value (QCRV)--A minimum quality standard of a non-destructive performance test (NDPT) established by the manufacturer for membrane module production that ensures that the module will attain the targeted log removal value (LRV) demonstrated during challenge testing.

(64) Reactor Validation Testing--A process by which a full-scale UV reactor's disinfection performance is determined relative to operating parameters that can be monitored. These parameters include flow rate, UV intensity as measured by a UV sensor and the UV lamp status.

(65) Resolution--The size of the smallest integrity breach that contributes to a response from a direct integrity test in membranes used to treat surface water or groundwater under the direct influence of surface water.

(66) [~~(48)~~] Sanitary control easement--A legally binding document securing all land, within 150 feet of a public water supply well location, from pollution hazards. This document must fully describe the location of the well and surrounding lands and must be filed in the county records to be legally binding.

(67) [~~(49)~~] Sanitary survey--An onsite review of the water source, facilities, equipment, operation and maintenance of a public

water system, for the purpose of evaluating the adequacy for producing and distributing safe drinking water.

(68) Sensitivity--The maximum log removal value (LRV) that can be reliably verified by a direct integrity test in membranes used to treat surface water or groundwater under the direct influence of surface water; also applies to some continuous indirect integrity monitoring methods.

(69) [~~(50)~~] Service line--A pipe connecting the utility service provider's main and the water meter, or for wastewater, connecting the main and the point at which the customer's service line is connected, generally at the customer's property line.

(70) [~~(51)~~] Service pump--Any pump that takes treated water from storage and discharges to the distribution system.

(71) [~~(52)~~] Transfer pump--Any pump which conveys water from one point to another within the treatment process or which conveys water to storage facilities prior to distribution.

(72) [~~(53)~~] Transient noncommunity water system--A public water system that is not a community water system and serves at least 25 persons at least 60 days out of the year, yet by its characteristics, does not meet the definition of a nontransient noncommunity water system.

(73) [~~(54)~~] Uniform Fire Code--The standards of the International Conference of Building Officials, 5360 Workman Mill Road, Whittier, California, 90601-2298.

(74) [~~(55)~~] Wastewater lateral--Any pipe or constructed conveyance carrying wastewater, running laterally down a street, alley, or easement, and receiving flow only from the abutting properties.

(75) [~~(56)~~] Wastewater main--Any pipe or constructed conveyance which receives flow from one or more wastewater laterals.

§290.39. General Provisions.

(a) - (i) (No change.)

(j) Changes in existing systems or supplies. Public water systems shall notify the executive director prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities. Public water systems shall submit plans and specifications for the proposed changes upon request. Changes to an existing disinfection process at a treatment plant that treats surface water or groundwater that is under the direct influence of surface water shall not be instituted without the prior approval of the executive director.

(1) The following changes are considered to be significant:

(A) - (C) (No change.)

(D) proposed changes in existing distribution systems when the change is greater than 10% of the existing distribution capacity or 250 connections, whichever is smaller, or results in the water system's inability to comply with any of the applicable capacity requirements of §290.45 of this title (relating to Minimum Water System Capacity Requirements); [~~and~~]

(E) proposed replacement or change of membranes modules; and

(F) [~~(E)~~] any other material changes specified by the executive director.

(2) - (3) (No change.)

(k) (No change.)

(l) Exceptions. Requests for exceptions to one or more of the requirements in this subchapter shall be considered on an individual basis. Any water system which requests an exception must demonstrate to the satisfaction of the executive director that the exception will not compromise the public health or result in a degradation of service or water quality.

(1) - (3) (No change.)

(4) The executive director may establish site specific design, operation, maintenance, and reporting requirements for systems that have been issued an exception to the subchapter.

(m) (No change.)

(n) The commission may require the owner or operator of a public drinking water supply system that was constructed without the approval required by THSC [~~(THSC)~~], §341.035, that has a history of noncompliance with THSC [~~(THSC)~~], Chapter 341, Subchapter C or commission rules, or that is subject to a commission enforcement action to take the following action:

(1) - (2) (No change.)

§290.41. Water Sources.

(a) - (b) (No change.)

(c) Groundwater sources and development.

(1) Groundwater sources shall be located so that there will be no danger of pollution from flooding or from unsanitary [~~insanitary~~] surroundings, such as privies, sewage, sewage treatment plants, livestock and animal pens, solid waste disposal sites or underground petroleum and chemical storage tanks and liquid transmission pipelines, or abandoned and improperly sealed wells.

(A) - (F) (No change.)

(2) (No change.)

(3) The construction, disinfection, protection, and testing of a well to be used as a public water supply source must meet the following conditions.

(A) - (B) (No change.)

(C) The space between the casing and drill hole shall be sealed by using enough cement under pressure to completely fill and seal the annular space between the casing and the drill hole. The well casing shall be cemented in this manner from the top of the shallowest formation to be developed to the earth's surface. The driller shall utilize a pressure cementation method in accordance with the AWWA Standard for Water Wells (A100-06 [~~A100-97~~]), Appendix C: Section C.2 [~~3~~] (Positive Displacement Exterior Method); Section C.3 [~~4~~] (Interior Method Without Plug); Section C.4 [~~5~~] (Positive Placement, Interior Method, Drillable Plug); and Section C.5 [~~6~~] (Placement Through Float Shoe Attached to Bottom of Casing). Cementation methods other than those listed in this subparagraph may be used on a site-specific basis with the prior written approval of the executive director. A cement bonding log, as well as any other documentation deemed necessary, may be required by the executive director to assure complete sealing of the annular space.

(D) - (E) (No change.)

(F) Upon well completion, or after an existing well has been reworked, the well shall be disinfected in accordance with current AWWA standards for well disinfection except that the disinfectant shall remain in the well for at least six hours.

(i) Before placing the well in service, the water containing the disinfectant shall be flushed from the well and then samples

of water shall be collected and submitted for microbiological analysis until three successive daily raw water samples are free of coliform organisms. The analysis of these samples must be conducted by a laboratory approved by the [~~Texas~~] Department of State Health Services.

(ii) (No change.)

(G) - (Q) (No change.)

(4) (No change.)

(d) Springs and other water sources.

(1) (No change.)

(2) Before placing the spring or similar source into service, completion data similar to that required by subsection (c)(3)(A) of this section must be submitted to the executive director for review and approval to the Texas Commission on Environmental Quality, Water Supply Division, MC 153, P.O. Box 13087, Austin, Texas 78711-3087 [~~78711-3987~~].

(3) - (4) (No change.)

(5) All systems with new springs or similar sources must monitor microbiological source water quality at the new springs or similar sources in accordance with §290.111 of this title (relating to Surface Water Treatment) on a schedule determined by the executive director. The system must notify the agency of the new spring or similar source prior to construction. The executive director may waive these requirements if the spring or similar source has been determined not to be under the direct influence of surface water.

(e) Surface water sources and development.

(1) To determine the degree of pollution from all sources within the watershed, an evaluation shall be made of the surface water source in the area of diversion and its tributary streams. The area where surface water sources are diverted for drinking water use shall be evaluated and protected from sources of contamination.

(A) - (E) (No change.)

(F) Before approval of a new surface water source, the system shall provide the executive director with information regarding specific water quality parameters of the potential source water. These parameters are pH, total coliform, *Escherichia coli* [~~Eserichia coli~~], turbidity, alkalinity, hardness, bromide, total organic carbon, temperature, color, taste and odor, regulated volatile organic compounds, regulated synthetic organic compounds, regulated inorganic compounds, and possible sources of contamination. If data on the incidence of *Giardia* [~~Giardia~~] cysts and *Cryptosporidium* [~~Cryptosporidium~~] oocysts has been collected, the information shall be provided to the executive director. This data shall be provided to the executive director as part of the approval process for a new surface water source.

(G) All systems with new surface water intakes or new bank filtration wells must monitor microbiological source water quality at the new surface water intakes or new bank filtration wells in accordance with §290.111 of this title on a schedule determined by the executive director. The system must notify the agency of the new surface water intake or bank filtration well prior to construction.

(2) - (5) (No change.)

§290.42. Water Treatment.

(a) Capacity and location.

(1) (No change.)

(2) The water treatment plant and all pumping units shall be located in well-drained areas not subject to flooding and away from seepage areas or where the groundwater [~~underground~~] water table is near the surface.

(A) - (B) (No change.)

(3) (No change.)

(b) Groundwater.

(1) (No change.)

(2) Treatment facilities shall be provided for groundwater if the water does not meet the drinking water standards. The facilities provided shall be in conformance with established and proven methods.

(A) Filters provided for turbidity and microbiological quality control shall be preceded by coagulant addition and shall conform to the requirements of subsection (d)(11) [~~(d)(10)~~] of this section. Filtration rates for iron and manganese removal, regardless of the media or type of filter, shall be based on a maximum rate of five gallons per square foot per minute.

(B) - (C) (No change.)

(3) - (7) (No change.)

(8) The executive director may require 4-log removal or inactivation of viruses based on raw water sampling results required by §290.116 of this title (relating to Groundwater Corrective Actions and Treatment Techniques).

(c) Springs and other water sources.

(1) Water obtained from springs, infiltration galleries, wells in fissured areas, wells in carbonate rock formations, or wells that do not penetrate an impermeable strata or any other source subject to surface or near surface contamination of recent origin shall be evaluated for the provision of treatment facilities. Minimum treatment shall consist of coagulation with direct filtration and adequate disinfection. In all cases, the treatment process shall be designed to achieve at least a 2-log removal of *Cryptosporidium* oocysts, a 3-log removal or inactivation of *Giardia* cysts, and a 4-log removal or inactivation of viruses before the water is supplied to any consumer. The executive director may require additional levels of treatment in cases of poor source water quality. Based on raw water monitoring results, the executive director may require additional levels of treatment for *Cryptosporidium* treatment as specified in §290.111 of this title (relating to Surface Water Treatment).

(A) - (B) (No change.)

(2) - (5) (No change.)

(6) Return of the decanted water or sludge to the treatment process shall be adequately controlled so that there will be a minimum of interference with the treatment process and shall conform to the applicable requirements of subsection (d)(3) of this section. Systems [~~Beginning July 1, 2004, systems~~] that do not comply with the provisions of subsection (d)(3) of this section commit a treatment technique violation and must notify their customers in accordance with the requirements of §290.122(b) of this title (relating to Public Notice).

(7) (No change.)

(d) Surface water.

(1) All water secured from surface sources shall be given complete treatment at a plant which provides facilities for pretreatment disinfection, taste and odor control, continuous coagulation, sedimentation, filtration, covered clearwell storage, and terminal disinfection of the water with chlorine or suitable chlorine compounds. In all cases, the treatment process shall be designed to achieve at least a 2-log removal of *Cryptosporidium* oocysts, a 3-log removal or inactivation of

Giardia cysts, and a 4-log removal or inactivation of viruses before the water is supplied to any consumer. The executive director may require additional levels of treatment in cases of poor source water quality. Based on raw water monitoring results, the executive director may require additional levels of treatment for *Cryptosporidium* treatment as specified in §290.111 of this title.

(2) (No change.)

(3) Return of the decanted water or solids to the treatment process shall be adequately controlled so that there will be a minimum of interference with the treatment process. Systems [~~Beginning July 1, 2004, systems~~] that do not comply with the provisions of this paragraph commit a treatment technique violation and must notify their customers in accordance with the requirements of §290.122(b) of this title (relating to Public Notice).

(A) - (C) (No change.)

(4) - (8) (No change.)

(9) Flocculation equipment shall be provided.

(A) (No change.)

(B) Flocculation facilities shall be designed to provide adequate time and mixing intensity to produce a settleable floc under varying raw water characteristics and raw water flow rates.

(i) Flocculation facilities for straight-flow and upflow sedimentation basins shall provide a minimum theoretical detention time of at least 20 minutes when operated at their design capacity. Flocculation facilities constructed prior to October 1, 2000 are exempt from this requirement if the settled water turbidity of each sedimentation basin remains below 10.0 nephelometric turbidity unit [~~Nephelometric Turbidity Unit~~] (NTU) and the treatment plant meets with turbidity requirements of §290.111 of this title (relating to Surface Water Treatment [~~Turbidity~~]).

(ii) (No change.)

(C) (No change.)

(10) (No change.)

(11) Gravity or pressure type filters shall be provided.

(A) - (D) (No change.)

(E) The filters shall be provided with facilities to monitor the performance of the filter. Monitoring devices shall be designed to provide the ability to measure and record turbidity as required by §290.111 of this title.

(i) (No change.)

(ii) Each [~~Beginning January 1, 2005, each~~] filter operated by a public water system that serves fewer than 10,000 people shall be equipped with an on-line turbidimeter and recorder which will allow the operator to measure and record the turbidity at 15-minute intervals. The executive director may allow combined filter effluent monitoring in lieu of individual filter effluent monitoring under the following conditions:

(I) - (II) (No change.)

(iii) - (v) (No change.)

(F) - (G) (No change.)

(12) - (16) (No change.)

(e) - (f) (No change.)

(g) Other treatment processes. Innovative/alternate treatment processes [~~The adjustment of fluoride ion content, special treatment for iron and manganese reduction, special methods for taste and odor control, demineralization, corrosion control processes, and other proposals covering other treatment processes~~] will be considered on an individual basis, in accordance with §290.39(l) of this title. [~~Package-type treatment systems and their components shall be subject to all applicable design criteria in this section.~~] Where innovative/alternate treatment systems are proposed, the licensed professional engineer must provide pilot test data or data collected at similar full-scale operations demonstrating that the system will produce water that meets the requirements of Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems). Pilot test data must be representative of the actual operating conditions which can be expected over the course of the year. The executive director may require a pilot study protocol to be submitted for review and approval prior to conducting a pilot study to verify compliance with the requirements of §290.39(l) of this title and Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems). The executive director may require proof of a one-year manufacturer's performance warrantee or guarantee assuring that the plant will produce treated water which meets minimum state and federal standards for drinking water quality.

(1) Package-type treatment systems and their components shall be subject to all applicable design criteria in this section.

(2) Bag and cartridge filtration systems or modules installed or replaced after April 1, 2012, and used for microbiological treatment, can receive *Cryptosporidium* and *Giardia* removal credit of up to 2.0-log for individual bag or cartridge filters and up to 2.5-log for bag or cartridge filters operated in series by meeting the criteria in subparagraphs (A) through (C) of this paragraph.

(A) The filter system must treat the entire plant flow.

(B) To be eligible for this credit, systems must receive approval from the executive director based on the results of challenge testing that is conducted according to the criteria established by 40 CFR §141.719(a) and the executive director.

(i) A factor of safety equal to 1.0-log for individual bag or cartridge filters and 0.5-log for bag or cartridge filters in series must be applied to challenge testing results to determine removal credit.

(ii) Challenge testing must be performed on full-scale bag or cartridge filters, and the associated filter housing or pressure vessel, that are identical in material and construction to the filters and housings the system will use for removal of *Cryptosporidium* and *Giardia*.

(iii) Bag or cartridge filters must be challenge tested in the same configuration that the system will use, either as individual filters or as a series configuration of filters.

(iv) Systems may use results from challenge testing conducted prior to January 5, 2006, if prior testing was consistent with 40 CFR §141.719, submitted by the system's licensed professional engineer, and approved by the executive director.

(v) If a previously tested filter is modified in a manner that could change the removal efficiency of the filter product line, additional challenge testing to demonstrate the removal efficiency of the modified filter must be conducted and results submitted to the executive director for approval.

(C) Pilot studies must be conducted using filters that will meet the requirements of this section.

(3) Membrane filtration systems or modules installed or replaced after April 1, 2012 and used for microbiological treatment, can receive *Cryptosporidium* and *Giardia* removal credit for membrane filtration if the systems or modules meet the criteria in subparagraphs (A) through (F) of this paragraph.

(A) The membrane module used by the system must undergo challenge testing to evaluate removal efficiency. Challenge testing must be conducted according to the criteria established by 40 CFR §141.719(b)(2) and the executive director.

(i) All membrane module challenge test protocols and results, the protocol for calculating the representative Log Removal Value (LRV) for each membrane module, the removal efficiency, calculated results of $LRV_{C\text{-}Test}$, and the non-destructive performance test with its Quality Control Release Value (QCRV) must be submitted to the executive director for review and approval prior to beginning a membrane filtration pilot study at a public water system.

(ii) Challenge testing must be conducted on either a full-scale membrane module identical in material and construction to the membrane modules to be used in the system's treatment facility, or a smaller-scale membrane module identical in material and similar in construction to the full-scale module if approved by the executive director.

(iii) Systems may use data from challenge testing conducted prior to January 5, 2006, if prior testing was consistent with 40 CFR §141.719, submitted by the system's licensed professional engineer, and approved by the executive director.

(iv) If a previously tested membrane is modified in a manner that could change the removal efficiency of the membrane product line or the applicability of the non-destructive performance test and associated QCRV, additional challenge testing to demonstrate the removal efficiency of the modified membrane and determine a new QCRV for the modified membrane must be conducted and results submitted to the executive director for approval.

(B) The membrane system must be designed to conduct and record the results of direct integrity testing in a manner that demonstrates a removal efficiency equal to or greater than the removal credit awarded to the membrane filtration system approved by the executive director and meets the requirements in clauses (i) - (ii) of this subparagraph.

(i) The design must provide for direct integrity testing of each membrane unit.

(ii) The design must provide direct integrity testing that has a resolution of 3 micrometers or less.

(iii) The design must provide direct integrity testing with a sensitivity sufficient to verify the log removal credit approved by the executive director. Sensitivity is determined by the criteria in 40 CFR §141.719(b)(3)(iii).

(iv) The executive director may reduce the direct integrity testing requirements for membrane units.

(C) The membrane system must be designed to conduct and record continuous indirect integrity monitoring on each membrane unit. The turbidity of the water produced by each membrane unit must be measured using the Hach FilterTrak Method 10133. The executive director may approve the use of alternative technology to monitor the quality of the water produced by each membrane unit.

(D) The level of removal credit approved by the executive director shall not exceed the lower of:

(i) the removal efficiency demonstrated during challenge testing conducted under the conditions in §290.42(g)(3)(A) of this title, or

(ii) the maximum removal efficiency that can be verified through direct integrity testing used with the membrane filtration process under the conditions in §290.42(g)(3)(B) of this title.

(E) Pilot studies must be conducted using membrane modules that will meet the requirements of this section.

(F) Membrane systems must be designed so that membrane units' feed water, filtrate, backwash supply, waste and chemical cleaning piping shall have cross-connection protection to prevent chemicals from all chemical cleaning processes from contaminating other membrane units in other modes of operation. This may be accomplished by the installation of a double block and bleed valving arrangement, a removable spool system or other alternative methods approved by the executive director.

(4) Bag, cartridge or membrane filtration systems or modules installed or replaced before April 1, 2012 and used for microbiological treatment, can receive *Cryptosporidium* and *Giardia* removal credit of up to 2.0-log based on site specific pilot study results, design, operation, and reporting requirements.

(5) Ultraviolet (UV) light reactors used for microbiological inactivation can receive *Cryptosporidium*, *Giardia* and virus inactivation credit if the reactors meet the criteria in subparagraphs (A) through (C) of this paragraph.

(A) UV light reactors can receive inactivation credit only if they are located after filtration.

(B) In lieu of a pilot study, the UV light reactors must undergo validation testing to determine the operating conditions under which a UV reactor delivers the required UV dose. Validation testing must be conducted according to the criteria established by 40 CFR §141.720(d)(2) and the executive director.

(i) The validation study must include the following factors: UV absorbance of the water; lamp fouling and aging; measurement uncertainty of on-line sensors; UV dose distributions arising from the velocity profiles through the reactor; failure of UV lamps and other critical system components; inlet and outlet piping or channel configuration of the UV reactor; lamp and sensor locations; and other parameters determined by the executive director.

(ii) Validation testing must be conducted on a full-scale reactor that is essentially identical to the UV reactor(s) to be used by the system and using waters that are essentially identical in quality to the water to be treated by the UV reactor.

(C) The UV light reactor systems must be designed to monitor and record parameters to verify the UV reactors operation within the validated conditions approved by the executive director. The UV light reactor must be equipped with facilities to monitor and record UV intensity as measured by a UV sensor, flow rate, lamp status, and other parameters designated by the executive director.

(h) - (m) (No change.)

§290.44. Water Distribution.

(a) - (g) (No change.)

(h) Backflow, siphonage.

(1) - (3) (No change.)

(4) All backflow prevention assemblies that are required according to this section and associated table located in §290.47(i) of this title shall be tested upon installation by a recognized backflow pre-

vention assembly tester and certified to be operating within specifications. Backflow prevention assemblies which are installed to provide protection against health hazards must also be tested and certified to be operating within specifications at least annually by a recognized backflow prevention assembly tester.

(A) Recognized backflow prevention assembly testers shall have completed an executive director approved course on cross-connection control and backflow prevention assembly testing, pass an examination administered by the executive director, and hold a current license [~~professional certification~~] as a backflow prevention assembly tester.

(i) (No change.)

(ii) Backflow prevention assembly testers may test and repair assemblies on firelines only if they are permanently employed by an Approved Fireline Contractor. The State Fire Marshal's [~~Marshall's~~] office requires that any person performing maintenance on firelines must be employed by an Approved Fireline Contractor.

(B) - (C) (No change.)

(5) - (6) (No change.)

(i) (No change.)

§290.45. Minimum Water System Capacity Requirements.

(a) - (b) (No change.)

(c) Noncommunity water systems serving transient accommodation units. The following water capacity requirements apply to noncommunity water systems serving accommodation units such as hotel rooms, motel rooms, travel trailer spaces, campsites, and similar accommodations.

(1) Groundwater supplies must meet the following requirements.

(A) (No change.)

(B) For systems serving fewer than 100 accommodation units with ground storage or serving 100 or more accommodation units, the system must meet the following requirements:

(i) (No change.)

(ii) a ground storage capacity of 35 gallons per unit [~~gpm~~];

(iii) - (iv) (No change.)

(2) (No change.)

(d) Noncommunity water systems serving other than transient accommodation units.

(1) The following table is applicable to paragraphs (2) and (3) of this subsection and shall be used to determine the maximum daily demand for the various types of facilities listed.
Figure: 30 TAC §290.45(d)(1)
[~~Figure: 30 TAC §290.45(d)(1)~~]

(2) (No change.)

(e) - (g) (No change.)

§290.46. Minimum Acceptable Operating Practices for Public Drinking Water Systems.

(a) - (c) (No change.)

(d) Disinfectant residuals and monitoring. A disinfectant residual must be continuously maintained during the treatment process and throughout the distribution system.

(1) (No change.)

(2) The disinfection equipment shall be operated to maintain the following minimum disinfectant residuals in each finished water storage tank and throughout the distribution system at all times:

(A) a free chlorine residual of 0.2 milligrams per liter (mg/L) [~~mg/L~~]; or

(B) (No change.)

(e) Operation by trained and licensed personnel. Except as provided in paragraph (1) of this subsection, the production, treatment, and distribution facilities at the public water system must be operated at all times under the direct supervision of a water works operator who holds an applicable, valid license issued by the executive director.

(1) (No change.)

(2) All public water systems that are subject to the provisions of this subsection shall meet the following requirements.

(A) - (B) (No change.)

(C) Public [~~Beginning January 1, 2004, public~~] water systems using chlorine dioxide shall place the operation of the chlorine dioxide facilities under the direct supervision of a licensed operator who has a Class "C" or higher license.

(3) - (6) (No change.)

(f) Operating records and reports. Water systems must maintain a record of water works operation and maintenance activities and submit periodic operating reports.

(1) - (2) (No change.)

(3) All public water systems shall maintain a record of operations.

(A) (No change.)

(B) The following records shall be retained for at least three years:

(i) - (iii) (No change.)

(iv) the turbidity monitoring results and exception reports for individual filters as required by §290.111 of this title (relating to Surface Water Treatment [~~Turbidity~~]);

(v) the calibration records for laboratory equipment, flow meters, rate-of-flow controllers, on-line turbidimeters, and on-line disinfectant residual analyzers; [~~and~~]

(vi) the records of backflow prevention device programs;[~~,~~]

(vii) the raw surface water monitoring results must be retained for three years after bin classification required by §290.111 of this title;

(viii) notification to the executive director that a system will provide 5.5-log *Cryptosporidium* treatment in lieu of raw surface water monitoring; and

(ix) the results of all surface water treatment monitoring that are used to demonstrate log inactivation or removal.

(C) (No change.)

(D) The following records shall be retained for at least five years:

(i) (No change.)

(ii) the results of inspections (as required in subsection (m)(1) of this section) for all water storage and pressure maintenance facilities; [~~and~~]

(iii) the results of inspections as required by subsection (m)(2) of this section for all pressure filters; [~~.~~]

(iv) any monitoring plans required by §290.121(b) of this title (relating to Monitoring Plans);

(v) documentation of compliance with state approved corrective action plan and schedules required to be completed by groundwater systems that must take corrective actions;

(vi) documentation of the reason for an invalidated fecal indicator source sample;

(vii) notification to wholesale system(s) of a distribution coliform positive sample for consecutive systems using groundwater; and

(viii) Consumer Confidence Report compliance documentation.

(E) The following records shall be retained for at least ten years:

(i) - (ii) (No change.)

(iii) any written reports, summaries, or communications relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by the executive director shall be kept for a period not less than ten years after completion of the survey involved; [~~and~~]

(iv) copies of the Customer Service Inspection reports required by subsection (j) of this section; [~~.~~]

(v) copy of any Initial Distribution System Evaluation (IDSE) report required by §290.115 of this title (relating to Stage 2 Disinfection By-products (TTHM and HAA5));

(vi) state notification of any modifications to an IDSE report;

(vii) copy of any 40/30 certification required by §290.115 of this title; and

(viii) documentation of corrective actions taken by groundwater systems in accordance with §290.116 of this title.

(F) (No change.)

(4) (No change.)

(g) Disinfection of new or repaired facilities. Disinfection by or under the direction of water system personnel must be performed when repairs are made to existing facilities and before new facilities are placed into service. Disinfection must be performed in accordance with American Water Works Association (AWWA) [~~AWWA~~] requirements and water samples must be submitted to a laboratory approved by the executive director. The sample results must indicate that the facility is free of microbiological contamination before it is placed into service. When it is necessary to return repaired mains to service as rapidly as possible, doses may be increased to 500 mg/L and the contact time reduced to 1/2 hour.

(h) - (i) (No change.)

(j) Customer service inspections. A customer service inspection certificate shall be completed prior to providing continuous water service to new construction, on any existing service either when the water purveyor has reason to believe that cross-connections or other potential contaminant hazards exist, or after any material improvement, correction, or addition to the private water distribution facilities. Any customer service inspection certificate form which varies from the format found in §290.47(d) of this title (relating to Appendices [~~Customer Service Inspection Certificate~~]) must be approved by the executive director prior to being placed in use.

(1) Individuals with the following credentials shall be recognized as capable of conducting a customer service inspection certification.

(A) Plumbing Inspectors and Water Supply Protection Specialists licensed by the Texas State Board of Plumbing Examiners (TSBPE).

(B) Customer service inspectors who have completed a commission-approved course, passed an examination administered by the executive director, and hold current professional license [~~certification or endorsement~~] as a customer service inspector.

(2) (No change.)

(3) These customer service inspection requirements are not considered acceptable substitutes for and shall not apply to the sanitary control requirements stated in §290.102(a)(5) of this title (relating to General Applicability [~~Definitions~~]).

(4) A customer service inspection is an examination of the private water distribution facilities for the purpose of providing or denying water service. This inspection is limited to the identification and prevention of cross-connections, potential contaminant hazards, and illegal lead materials. The customer service inspector has no authority or obligation beyond the scope of the commission's regulations. A customer service inspection is not a plumbing inspection as defined and regulated by the TSBPE [~~Texas State Board of Plumbing Examiners (TSBPE)~~]. A customer service inspector is not permitted to perform plumbing inspections. State statutes and TSBPE adopted rules require that TSBPE licensed plumbing inspectors perform plumbing inspections of all new plumbing and alterations or additions to existing plumbing within the municipal limits of all cities, towns, and villages which have passed an ordinance adopting one of the plumbing codes recognized by TSBPE. Such entities may stipulate that the customer service inspection be performed by the plumbing inspector as a part of the more comprehensive plumbing inspection. Where such entities permit customer service inspectors to perform customer service inspections, the customer service inspector shall report any violations immediately to the local entity's plumbing inspection department.

(k) - (n) (No change.)

(o) Filter backwashing at surface water treatment plants. Filters must be backwashed when a loss of head differential of six to ten feet is experienced between the influent and effluent loss of head gauges or when the turbidity level at the effluent of the filter reaches 1.0 nephelometric turbidity unit (NTU) [~~NTU~~].

(p) (No change.)

(q) Special precautions. Special precautions must be instituted by the water system owner or responsible official in the event of low distribution pressures (below 20 pounds per square inch (psi) [~~psi~~]), water outages, microbiological samples found to contain *E. coli* or fecal coliform organisms, failure to maintain adequate chlorine residuals, elevated finished water turbidity levels, or other conditions which indicate that the potability of the drinking water supply has been compromised.

(1) - (4) (No change.)

(r) (No change.)

(s) Testing equipment. Accurate testing equipment or some other means of monitoring the effectiveness of any chemical treatment or pathogen inactivation or removal processes must be used by the system.

(1) (No change.)

(2) Laboratory equipment used for compliance testing shall be properly calibrated.

(A) - (B) (No change.)

(C) Chemical disinfectant [~~Disinfectant~~] residual analyzers shall be properly calibrated.

(i) - (iii) (No change.)

(D) Ultraviolet (UV) light disinfection analyzers shall be properly calibrated.

(i) The accuracy of duty UV sensors shall be verified with a reference UV sensor monthly, according to the UV sensor manufacturer.

(ii) The reference UV sensor shall be calibrated by the UV sensor manufacturer on a yearly basis, or sooner if needed.

(iii) If used, the Ultraviolet Transmittance (UVT) analyzer shall be calibrated weekly according to the UVT analyzer manufacturer specifications.

(E) Systems must verify the performance of direct integrity testing equipment in a manner and schedule approved by the executive director.

(t) (No change.)

(u) Abandoned wells. Abandoned public water supply wells owned by the system must be plugged with cement according to 16 Texas Administrative Code (TAC) [~~TAC~~] Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers). Wells that are not in use and are non-deteriorated as defined in those rules must be tested every five years or as required by the executive director to prove that they are in a non-deteriorated condition. The test results shall be sent to the executive director for review and approval. Deteriorated wells must be either plugged with cement or repaired to a non-deteriorated condition.

(v) (No change.)

(w) Security. All systems shall maintain internal procedures to notify the executive director by a toll-free reporting phone number immediately of the following events, if the event may negatively impact the production or delivery of safe and adequate drinking water:

(1) an unusual or unexplained unauthorized entry at property of the public water system;

(2) an act of terrorism against the public water system;

(3) an unauthorized attempt to probe for or gain access to proprietary information that supports the key activities of the public water system;

(4) a theft of property that supports the key activities of the public water system; or

(5) a natural disaster, accident, or act that results in damage to the public water system.

§290.47. Appendices.

(a) - (b) (No change.)

(c) Appendix C. Sample Sanitary Control Easement Document for a Public Water Well.
Figure: 30 TAC §290.47(c)
[~~Figure: 30 TAC §290.47(c)~~]

(d) Appendix D. Customer Service Inspection Certification.
Figure: 30 TAC §290.47(d)
[~~Figure: 30 TAC §290.47(d)~~]

(e) Appendix E. Boil Water Notification.
Figure: 30 TAC §290.47(e)
[~~Figure: 30 TAC §290.47(e)~~]

(f) Appendix F. Sample Backflow Prevention Assembly Test and Maintenance Report.
Figure: 30 TAC §290.47(f)
[~~Figure: 30 TAC §290.47(f)~~]

(g) (No change.)

(h) Appendix H. Special Precautions.
Figure: 30 TAC §290.47(h)
[~~Figure: 30 TAC §290.47(h)~~]

(i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

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SUBCHAPTER F. DRINKING WATER STANDARDS GOVERNING DRINKING WATER QUALITY AND REPORTING REQUIREMENTS FOR PUBLIC WATER SYSTEMS

30 TAC §§290.101 - 290.104, 290.106 - 290.119, 290.121, 290.122

STATUTORY AUTHORITY

These amendments and new sections are proposed under Texas Water Code (TWC) §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; and Texas Health and Safety Code (THSC) §341.031, which allows the commission to adopt rules to implement the federal Safe Drinking Water Act, 42 United States Code §§300f to 300j-26;and THSC §341.0315, which requires public water systems to comply with commission rules adopted to ensure the supply of safe drinking water.

The proposed amendments and new sections implement TWC §5.102, §5.103, §5.105, THSC §341.031, and §341.0315.

§290.101. Purpose.

The purpose of these standards is to assure the safety of public water supplies with respect to microbiological, chemical and radiological quality and to further efficient processing through control tests, laboratory checks, operating records and reports of public water supply systems. These standards are written to comply with the requirements

of the Federal "Safe Drinking Water Act," 42 USC [~~U.S.C.~~] §300f *et seq.* [~~et. seq.~~], and the "Primary Drinking Water Regulations" which have been promulgated by the United States Environmental Protection Agency [~~EPA~~].

§290.102. General Applicability.

(a) General applicability [~~Applicability~~]. This subchapter shall apply to all public water systems as described in each section, unless the system:

(1) - (5) (No change.)

(b) Variances and exemptions. Variances and exemptions may be granted at the discretion of the executive director according to the Safe [~~Safety~~] Drinking Water Act (SDWA), 42 United States Code (USC), §300g-4 and §300g-5, and according to National Primary Drinking Water Regulations, Subpart K, 40 Code of Federal Regulations (CFR) [~~CFR~~] §§142.301 - 142.313. The executive director may not approve variances or exemptions from:

(1) - (3) (No change.)

(c) Extensions. An extension to the compliance deadline for an MCL or treatment technique that becomes effective on or after January 1, 2002, may be granted at the discretion of the executive director in accordance with the SDWA, 42 USC, §300g-1(b)(10).

(1) The executive director may extend the effective date of an MCL or treatment technique for up to two years if all of the following conditions apply:

(A) - (B) (No change.)

(C) the extension is granted only to public water systems that were in operation on the date that the MCL or treatment technique was promulgated by the United States Environmental Protection Agency (EPA) [~~EPA~~];

(D) - (F) (No change.)

(2) - (3) (No change.)

(d) Motion to overturn. Any person may file a motion to overturn the executive director's decision to grant or deny a variance, exemption, or extension under this section according to the procedures set out in §50.139 of this title (relating to Motion to Overturn Executive Director's Decision).

(e) Monitoring schedule [~~Schedule~~]. All monitoring required by this chapter shall be conducted in a manner and on a schedule approved by the executive director in concurrence with the requirements of the administrator of the EPA.

(f) Modified monitoring [~~Monitoring~~]. When a public water system supplies water to one or more other public water systems, the executive director may modify the monitoring requirements imposed by this chapter to the extent that the interconnection of the systems justifies treating them as a single system for monitoring purposes. Any modified monitoring shall be conducted pursuant to a schedule specified by the executive director in concurrence with the requirements of the administrator of the EPA.

§290.103. Definitions.

The following definitions shall apply in the interpretation and enforcement of this subchapter. If a word or term used in this subchapter is not contained in the following list, its definition shall be as shown in §290.38 of this title (relating to Definitions) or in Title 40 Code of Federal Regulations (CFR) §141.2. Other technical terms used shall have the meanings or definitions listed in the latest edition of "Glossary, Water and Wastewater Control Engineering," prepared by a joint editorial board representing the American Public Health Association, American Society of Civil Engineers, American Water Works Association, and the Water Pollution Control Federation.

(1) Assessment source monitoring--Raw groundwater source monitoring required by the executive director based on groundwater source susceptibility to fecal contaminants.

(2) Combined distribution system (CDS)--The interconnected distribution system consisting of the distribution systems of wholesale systems and of the consecutive systems that receive finished water.

(A) The executive director may determine that the CDS does not include certain systems based on factors such as providing or receiving a relatively small amount of water or only on an emergency basis.

(B) A public water system may be determined to be in a different CDS for the purposes of compliance with regulations based on the Stage 2 Disinfection Byproducts Rule (DBP2) and the Long Term Stage 2 Enhanced Surface Water Treatment Rule (LT2).

(i) For the purposes of raw water monitoring under LT2, the CDS shall be based on the retail and wholesale population served by each surface water treatment plant or plant treating groundwater under the direct influence of surface water.

(ii) For the purposes of DBP2, the CDS shall be determined based on the retail population served within each individual system's distribution system.

(3) [~~(1)~~] Compliance cycle--The nine-year (calendar year) cycle during which public water systems must monitor. Each compliance cycle consists of three, three-year compliance periods. The first compliance cycle begins January 1, 1993, and ends December 31, 2001. The second begins January 1, 2002, and ends December 31, 2010. The third begins January 1, 2011, and ends December 31, 2019. The cycle continues thereafter in a similar pattern.

(4) [~~(2)~~] Compliance period--A three-year (calendar year) period within a compliance cycle. Each compliance cycle has three, three-year compliance periods. Within the first compliance cycle, the first compliance period is called the initial compliance period and runs from January 1, 1993, to December 31, 1995. The second period from January 1, 1996, to December 31, 1998. The third period from January 1, 1999, to December 31, 2001. Compliance periods in subsequent compliance cycles follow the same pattern.

(5) [~~(3)~~] Comprehensive performance evaluation (CPE)--A thorough review and analysis of a treatment plant's performance-based capabilities and the associated administrative, operation and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and to emphasize approaches that can be implemented without significant capital improvements. The comprehensive performance evaluation consists of the following components: assessment of plant performance; evaluation of major unit processes; identification and prioritization of performance limiting factors; assessment of the applicability of comprehensive technical assistance; and preparation of a CPE report.

(6) Consecutive system--A public water system that receives some or all of its finished water from one or more wholesale systems. Delivery may be through a direct connection or through the distribution system of one or more consecutive systems.

(7) [~~(4)~~] Disinfection profile--A summary of daily *Cryptosporidium, Giardia lamblia* [~~Giardia lamblia~~] and viral inactivation obtained through disinfection at the treatment plant.

(8) [~~(5)~~] Disinfection by-products (DBP)--Chemical compounds formed by the reaction of a disinfectant with the natural organic matter present in water.

(9) [~~(6)~~] DPD--Abbreviation for N,N-diethyl-p-phenylenediamine, a reagent used in the determination of several residuals. DPD methods are available for both volumetric (titration) and colorimetric determinations, and are commonly used in the field as part of a colorimetric test kit.

(10) Dual sample set--A set of two samples collected at the same time and same location, with one sample analyzed for total trihalomethanes (TTHM) and the other sample analyzed for haloacetic acids-group of five (HAA5). Dual sample sets are collected for the purposes of conducting an initial distribution system evaluation and determining compliance with the TTHM and HAA5 maximum contaminant levels.

(11) [~~(7)~~] Enhanced coagulation--The removal of disinfection by-product precursors to a specified level by conventional coagulation and sedimentation.

(12) [~~(8)~~] Enhanced softening--The removal of disinfection by-product precursors to a specified level by softening.

(13) [~~(9)~~] Entry point [~~to the distribution system~~]--Any point where a source of treated water first enters the distribution system. Entry points to the distribution system may include points where chlorinated well water, treated surface water, rechlorinated water from storage, or water purchased from another supplier enters the distribution system.

(14) [~~(10)~~] Entry point sampling site--A sampling site representing the quality of the water entering the distribution system at each designated entry point.

(15) Fecal indicators--Microbiological organisms used to indicate the presence of fecal contamination. Examples include: fecal coliform, *E. coli*, enterococci, and coliphage.

(16) [~~(11)~~] Filter assessment--An in-depth evaluation of an individual filter, including the analysis of historical filtered water turbidity from the filter, development of a filter profile, evaluation of media condition, identification and prioritization of factors limiting filter performance, appraisal of the applicability of corrections, and preparation of a filter self-assessment report.

(17) [~~(12)~~] Filter profile--A graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts versus time for an entire filter run. The filter profile must include all the data collected from the time that the filter placed into service until the time that the backwash cycle is complete and the filter is restarted. The filter profile must also include data collected as another filter is being backwashed.

(18) Finished water--Water that is introduced into the distribution system of a public water system and intended for distribution and consumption without further treatment, except as necessary to maintain water quality within the distribution system (e.g., booster disinfection, addition of corrosion control chemicals).

(19) Groundwater corrective action--Action required when a raw groundwater source sample is found to be positive for *E. coli*or other fecal indicators as described under §290.116(b) of this title (relating to Groundwater Corrective Actions and Treatment Techniques).

(20) Groundwater corrective action plan--A plan approved by the executive director documenting the steps to be taken to address fecal contamination of a groundwater source as described under §290.116(b) of this title. The groundwater corrective action plan must be approved within 30 of being notified of the fecal contamination.

(21) Groundwater system--For the purposes of compliance with §290.109 of this title (relating to Microbial Contaminants) and with §290.116 of this title (relating to Groundwater Corrective Actions and Treatment Techniques), a public water system that provides, uses, or distributes any groundwater except if the groundwater is combined with surface water (or with groundwater under the direct influence of surface water) prior to treatment.

(22) [~~(13)~~] Haloacetic acids (five) (HAA5)--The sum of the monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid concentrations in milligrams per liter, rounded to two significant figures after adding the sum.

(23) [~~(14)~~] Halogen--One of the chemical elements chlorine, bromine, or iodine.

(24) Hydrogeologic sensitivity assessment--A determination of whether groundwater systems obtain water from hydrogeologically sensitive sources.

(25) Locational running annual average (LRAA)--The average of analytical results for samples taken at a specific monitoring location during the previous four calendar quarters.

(26) [~~(15)~~] Maximum contaminant level (MCL)--The maximum concentration of a regulated contaminant that is allowed in drinking water before the public water system is cited for a violation. Maximum contaminant levels for regulated contaminants are defined in the applicable sections of this subchapter.

(27) [~~(16)~~] Maximum residual disinfectant level (MRDL)--The disinfectant concentration that may not be exceeded in the distribution system. There is convincing evidence that addition of a disinfectant is necessary for control of waterborne microbial contaminants.

(28) [~~(17)~~] Minimum acceptable disinfectant residual--The lowest disinfectant concentration allowed in the distribution system for microbial control.

(29) Operational evaluation level (OEL)--Calculated level of TTHM or HAA5, an exceedance of which requires a system to perform an evaluation of factors in the distribution system contributing to disinfection by-product formation and submit an operation evaluation report as described in §290.115(e)(2) of this title (relating to Stage 2 Disinfection By-products (TTHM and HAA5)).

(30) Raw water--Water prior to any treatment including disinfection that is intended to be used, after treatment, as drinking water.

(A) Raw groundwater is water from a groundwater source.

(B) Raw surface water is any water from a surface water source or from a groundwater under the direct influence of surface water source.

(31) Raw groundwater source sampling--Fecal indicator sampling at untreated groundwater sources including triggered source water and assessment source monitoring.

(32) [~~(18)~~] Specific ultraviolet absorption at 254 nanometers (nm) (SUVA)--An indirect indicator of whether the organic carbon in water is humic or non-humic. It is calculated by dividing a sample's ultraviolet absorption at a wavelength of 254 nm (UV254) (in inverse meters [~~m^{-1}~~]) by its concentration of dissolved organic carbon (DOC) (in milligrams per liter [~~mg/L~~]).

(33) [~~(19)~~] Total organic carbon (TOC)--The concentration of total organic carbon, in milligrams per liter, measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two significant figures. TOC is a surrogate measure for precursors to formation of disinfection by-products.

(34) [~~(20)~~] Total trihalomethanes (TTHM)--The sum of the chloroform, dibromochloromethane, bromodichloromethane, and bromoform concentrations in milligrams per liter, rounded to two significant figures after summing.

(35) Triggered source water monitoring--Raw groundwater source monitoring required for systems not providing at least 4-log treatment of viruses when a routine distribution coliform sample is positive.

(36) [~~(21)~~] Trihalomethane (THM)--One of the family of organic compounds named as derivatives of methane, wherein three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure.

(37) Wholesale system--A public water system that treats source water as necessary to produce finished water and then delivers some or all of that finished water to another public water system. Delivery may be through a direct connection or through the distribution system of one or more consecutive systems.

§290.104. Summary of Maximum Contaminant Levels, Maximum Residual Disinfectant Levels, Treatment Techniques, and Action Levels.

(a) (No change.)

(b) MCLs for inorganic compounds. The MCLs for inorganic contaminants listed in this subsection apply to public water systems as provided in §290.106 of this title (relating to Inorganic Contaminants).
Figure: 30 TAC §290.104(b)
[~~Figure: 30 TAC §290.104(b)~~]

(c) - (f) (No change.)

(g) Surface water treatment [~~Turbidity~~]. Systems treating surface water or groundwater under the direct influence of surface water must meet the turbidity treatment technique requirements as provided in §290.111 of this title (relating to Surface Water Treatment [~~Turbidity~~]).

(1) The turbidity level of the combined filter effluent must never exceed 1.0 nephelometric turbidity unit [~~Nephelometric Turbidity Unit~~] (NTU) and the turbidity level of the combined filter effluent must be 0.3 NTU or less in at least 95% of the samples tested each month.

(2) Systems are subject to the raw water monitoring, pathogen removal and inactivation and individual filter turbidity provisions of §290.111 of this title.

(h) (No change.)

(i) Disinfection by-products (total trihalomethanes (TTHM) and haloacetic acids (HAA5)). The MCLs for TTHM and HAA5 apply to water systems as provided in §290.113 of this title (relating to Stage 1 Disinfection By-products (TTHM and HAA5)) and in §290.115 of this title (relating to Stage 2 Disinfection By-products (TTHM and HAA5)). The MCLs for TTHM and HAA5 are:

(1) - (2) (No change.)

(j) - (l) (No change.)

§290.106. Inorganic Contaminants.

(a) Applicability. All public water systems are subject to the requirements of this section.

(1) - (3) (No change.)

[~~(4) Public water systems shall comply with the 0.05 milligrams per liter (mg/L) MCL for arsenic until January 23, 2006 and comply with the 0.010 mg/L MCL for arsenic starting January 23, 2006.~~]

(b) Maximum contaminant levels for IOCs. The MCLs for IOCs listed in the following table apply to community and nontransient, noncommunity water systems. The MCLs for nitrate, nitrite, and total nitrate and nitrite also apply to transient, noncommunity water systems.
Figure: 30 TAC §290.106(b)
[~~Figure: 30 TAC §290.106(b)~~]

(c) - (e) (No change.)

(f) Compliance determination for IOCs. Compliance with this section shall be determined using the following criteria.

(1) - (7) (No change.)

(8) A public water system that fails to do a required public notice or certify that the public notice has been performed commits a public notice violation.

(g) Public notice for IOCs. A public water system that violates the requirements of this section must notify the executive director and the system's customers.

(1) A public water system that violates the MCL for nitrate, nitrite, or the sum of nitrate and nitrite shall notify the executive director within 24 hours [~~by the next business day~~] and the water system customers of this acute violation in accordance with the requirements of §290.122(a) of this title (relating to Public Notification).

(2) - (5) (No change.)

(h) - (j) (No change.)

§290.107. Organic Contaminants.

(a) - (b) (No change.)

(c) Monitoring requirements for organic contaminants. Public water systems shall monitor for organic contaminants at the locations and frequency in paragraphs (1) and (2) of this subsection. All monitoring conducted under the requirements of this section must be conducted at sites designated in the public water system's monitoring plan. All samples must be taken during periods of normal operation.

(1) (No change.)

(2) VOC monitoring requirements. Monitoring of the VOC contaminants shall be conducted at the frequency and locations given in this paragraph.

(A) VOC monitoring locations. Monitoring of the VOC contaminants shall be conducted at the following locations.

(i) [~~Routine monitoring locations for VOCs.~~] Systems shall routinely sample at sample sites representative of each entry point to the distribution system.

(ii) - (iii) (No change.)

(B) (No change.)

(C) Routine VOC monitoring frequency. Monitoring of the VOC contaminants shall be conducted at the following frequency.

(i) (No change.)

(ii) If the initial monitoring for VOC contaminants has been completed [~~by December 31, 1992~~], and the system did not detect any VOC contaminant listed in subsection (b)(2) of this section, the system shall take one sample annually beginning with the initial compliance period.

(iii) - (v) (No change.)

(D) - (F) (No change.)

(d) (No change.)

(e) Reporting requirements for organic contaminants. Upon the request of the executive director, the owner or operator of a public water system must provide the executive director with a copy of the results of any test, measurement, or analysis required by this subsection. The copies must be submitted within ten days of the request or within ten days of their receipt by the public water system, whichever is later. The copies must be mailed to the Water Supply Division, MC 155, Texas Commission on Environmental Quality, [~~Water Supply Division, MC 155,~~] P.O. Box 13087, Austin, Texas 78711-3087.

(f) Compliance determination for organic contaminants. Compliance with the MCLs of subsection (b)(1) and (2) of this section shall be determined based on the analytical results obtained at each entry point to the distribution system.

(1) - (2) (No change.)

(3) A public water system that fails to do a required public notice or certify that the public notice has been performed commits a public notice violation.

(g) - (h) (No change.)

§290.108. Radionuclides Other than Radon.

(a) Applicability. All community water systems shall comply with the requirements of this section regarding radionuclide contaminants. Public water systems treating groundwater under the direct influence of surface water must comply with the radionuclide requirements for surface water systems. Public water systems shall comply with the initial monitoring requirements [~~for uranium by December 31, 2007~~]. [~~Public water systems shall comply with the maximum contaminant level (MCL) for uranium starting December 8, 2003.~~]

(b) Maximum contaminant levels (MCL). The concentration of radionuclide contaminants in the water entering the distribution system shall not exceed the following MCLs.

(1) MCLs for naturally occurring radionuclides are as follows:

(A) - (B) (No change.)

(C) [~~effective December 8, 2003,~~] 30 micrograms per liter (µg/L) [~~(g/L)~~] for uranium.

(2) (No change.)

(c) Monitoring requirements. Public water systems shall measure the concentration of radionuclides at locations and frequencies specified in the system's monitoring plan. All samples must be collected during normal operating conditions.

(1) Monitoring frequency for naturally occurring radionuclides. The monitoring frequency requirements for gross alpha particle activity, combined radium-226 and radium-228, and uranium are as follows.

(A) Initial monitoring frequency. All systems that use a new source of water must begin to conduct initial monitoring of the new source within 90 days after initiating use of the source.

(i) - (ii) (No change.)

[(iii) ~~Systems without acceptable historical data, as defined in subclauses (I) - (III) of this clause, shall collect four consecutive quarterly samples at all entry points before December 31, 2007.~~]

[(I) ~~Systems with a single entry point may use entry point or distribution system sample results from the January 1, 2002 through December 31, 2004 compliance period.~~]

[(II) ~~Systems with multiple entry points may use entry point sample results from the January 1, 2002 through December 31, 2004 compliance period.~~]

[(III) ~~Systems with no entry point sample results from the January 1, 2002 through December 31, 2004 compliance period that have distribution sample results from that compliance period, may request that these samples be used based on documentation from the system establishing that distribution results represent constituent levels at each entry point.~~]

(B) - (G) (No change.)

(2) - (3) (No change.)

(d) (No change.)

(e) Reporting requirements. Upon the request of the executive director, the owner or operator of a public water system must provide the executive director with a copy of the results of any test, measurement, or analysis required by this section. The copies must be submitted within ten days of the request or within ten days of their receipt by the public water system, whichever is later. The copies must be mailed to the Water Supply Division, MC 155, Texas Commission on Environmental Quality, [~~Water Supply Division, MC 155,~~] P.O. Box 13087, Austin, Texas 78711-3087.

(f) Compliance determination. Compliance with the requirements of this section shall be determined as follows.

(1) - (4) (No change.)

(5) A public water system that fails to do a required public notice or certify that the public notice has been performed commits a public notice violation.

(g) - (j) (No change.)

§290.109. Microbial Contaminants.

(a) (No change.)

(b) Maximum contaminant levels (MCL) for microbial contaminants. Treatment techniques and MCL requirements for microbial contaminants are based on detection of those contaminants or fecal indicator organisms. [~~The MCL for microbial contaminants if based on the presence or absence of total coliform bacteria in a sample.~~]

(1) The MCL for microbial contaminants in the distribution system is based on the presence of total or fecal coliform bacteria in routine, repeat, and increased monitoring distribution samples.

(A) [~~(1)~~] For a system which collects at least 40 routine distribution [~~bacteriological~~] samples per month, the MCL is achieved when more than 5.0% of samples collected in a month are coliform positive. [~~total coliform-positive samples, of the samples collected during the month.~~]

(B) [~~(2)~~] For a system which collects fewer than 40 routine distribution samples per month [~~samples/month~~], the MCL is achieved when more than one sample is coliform positive. [~~one total coliform positive sample, of the samples collected during the month.~~]

(C) The acute MCL is achieved when a repeat sample is fecal coliform or *E. coli* positive; or a total coliform positive repeat sample follows a fecal coliform or *E. coli* positive routine sample.

(2) For systems required to collect raw groundwater samples, the standard is no detection of fecal indicators in a raw groundwater samples.

(c) Monitoring requirements for microbial contaminants. Public water systems shall collect samples for total coliform, [~~and for~~] fecal coliform, *E. coli* [~~or *Escherichia coli*~~] , or other fecal indicator organisms at locations and frequency as directed by the executive director. All compliance samples must be collected during normal operating conditions.

(1) Routine microbial sampling locations. Public water systems shall routinely monitor for microbial contaminants at the following locations.

(A) Public water systems must collect routine distribution coliform [~~bacteriological~~] samples at active service connections which are representative of water quality throughout the distribution system. Other sampling sites may be used if located adjacent to active service connections.

(B) Public water systems shall collect distribution coliform samples [~~monitor for microbial contaminants~~] at locations specified in the system's monitoring plan.

(2) Routine distribution coliform [~~microbial~~] sampling frequency. Public water systems must sample for distribution coliform [~~microbiological contaminants~~] at the following frequency: [~~.~~]

(A) Community and noncommunity public water systems must collect routine distribution coliform [~~bacteriological~~] samples at a frequency based on the population served by the system. [~~:~~]

(i) - (iii) (No change.)

(B) A public water system which uses surface water or groundwater under the direct influence of surface water must collect routine distribution coliform samples at regular time intervals throughout the month.

(C) A public water system which uses only uses only purchased water or groundwater not under the direct influence of surface water and serves more than 4,900 persons must collect routine distribution coliform samples at regular time intervals throughout the month.

(D) A public water system which uses only purchased water or groundwater not under the direct influence of surface water and serves 4,900 persons or fewer may collect all required routine distribution coliform samples on a single day if they are taken from different sites.

(E) (No change.)

(F) If a system collecting fewer than five routine distribution coliform samples per month has one or more total coliform-positive samples and the executive director does not invalidate the sample(s) in accordance with subsection (c)(4) of this section, it must collect at least five routine distribution coliform samples during the next month the system provides water to the public.

(3) Repeat distribution coliform sampling [~~microbial monitoring~~] requirements. Systems shall conduct repeat monitoring if one or more of the routine samples is found to contain coliform organisms.

(A) If a routine distribution coliform sample is [~~total~~] coliform-positive, the public water system must collect a set of repeat distribution coliform samples within 24 hours of being notified of the positive result, or as soon as possible if the local laboratory is closed.

(i) A system which collects more than one routine distribution coliform sample per month must collect no fewer than three repeat samples for each [~~total~~] coliform-positive sample found.

(ii) A system which collects one routine distribution coliform sample per month must collect no fewer than four repeat samples for each [~~total~~] coliform-positive sample found.

(B) The system must collect all repeat samples on the same day, except [~~that~~] a system with a single service connection may collect daily repeat samples until the required number of repeat samples has been collected.

(C) The system must collect at least one repeat sample from the sampling tap where the original [~~total~~] coliform-positive sample was taken, and at least one repeat sample at a tap within five service connections upstream and at least one repeat sample at a tap within five service connections downstream of the original sampling site. If a fourth repeat sample is required, it must be collected within five service connections upstream or downstream. If the positive routine sample was collected at the end of the distribution line, one repeat sample must be collected at that point and all other samples must be collected within five connections upstream of that point.

(D) If one or more repeat samples in the set is total coliform-positive, the public water system must collect an additional set of repeat samples in the manner specified in subparagraphs (A) - (C) of this paragraph. The additional samples must be collected within 24 hours [~~24-hours~~] of being notified of the positive result or as soon as possible if the local laboratory is closed. The system must repeat this process until either total coliforms are not detected in one complete set of repeat samples or the system determines that the MCL for total coliforms has been exceeded.

(E) (No change.)

(4) Raw groundwater source monitoring. Any raw groundwater source sample required under this paragraph must be collected at a location prior to any treatment of the groundwater source.

(A) General requirements. A groundwater system must conduct triggered source water monitoring for *E. coli* or other fecal indicators, if both of the following conditions exist.

(i) The system does not provide at least 4-log treatment of viruses before or at the first customer for each groundwater source; and

(ii) The system is notified that a routine distribution coliform sample is positive and the sample is not invalidated under paragraph (5) of this subsection.

(B) Sampling requirements. A groundwater system must collect, within 24 hours of notification of the distribution total coliform positive sample, at least one raw groundwater source *E. coli* sample from each groundwater source in use at the time the distribution coliform-positive sample was collected.

(i) The executive director may extend the 24-hour time limit on a case-by case basis if the system cannot collect the raw groundwater source sample within 24 hours due to circumstances beyond its control.

(ii) If approved by the executive director and documented in the system's monitoring plan, systems with more than one groundwater source may be allowed to sample a representative groundwater source or sources. Systems must modify their current monitoring plan to identify one or more groundwater sources that are representa-

tive of each distribution coliform sampling site and is intended to be used for representative source sampling.

(iii) A groundwater system serving 1,000 people or fewer may use one of the four required repeat samples collected from a raw groundwater source to meet both the repeat requirements of subparagraph (A)(ii) of this paragraph and the triggered raw source monitoring requirements in this paragraph. If a required repeat sample is used to meet both requirements and found to be *E. coli* positive, the system will have achieved an acute MCL as defined in subsection (b)(1)(C) of this section and corrective action will be required for the groundwater source were the sample was found to be *E. coli* positive.

(C) Consecutive and wholesale systems. Consecutive groundwater systems receiving drinking water from a wholesaler must notify the wholesale system(s) within 24 hours of being notified of the positive coliform distribution sample. The wholesale groundwater system(s) must comply with the following:

(i) A wholesale groundwater system that receives notice of a distribution coliform sample positive from a consecutive system it serves must collect a sample from each of its groundwater sources within 24 hours of the notification and analyze each sample for the presence of *E. coli*.

(ii) If any raw source sample is *E. coli* positive, the wholesale groundwater system must notify all consecutive systems served by that groundwater source of the fecal indicator positive within 24 hours of being notified.

(D) Exceptions to the triggered source monitoring requirements. A groundwater system is not required to comply with the triggered source monitoring requirements if any of the following conditions exist.

(i) The executive director determines and documents in writing, that the distribution coliform positive sample is caused by a distribution system deficiency; or

(ii) The distribution coliform positive sample is collected at a location that meets the distribution coliform sample invalidation criteria as specified in paragraph (5) of this subsection.

(E) Assessment source monitoring. The executive director may require monthly source assessment raw monitoring without the presence of a positive total coliform distribution sample if well conditions exist that indicate the groundwater may be susceptible to fecal contamination.

[~~(4) Sample invalidation. The executive director may invalidate a total coliform-positive sample if one of the following conditions is met.~~]

[~~(A) The executive director may invalidate a sample if the laboratory establishes that improper sample analysis caused the total coliform-positive result.~~]

[~~(B) The executive director may invalidate a sample if the results of repeat samples collected as required by this section determines that the total coliform-positive sample resulted from a domestic or other non-distribution system plumbing problem. The executive director cannot invalidate a sample on the basis of repeat sample results unless all repeat sample(s) collected at the same tap as the original total coliform-positive sample are also total coliform-positive, and all repeat samples collected within five service connections of the original tap are total coliform-negative. Under those circumstances, the system may cease resampling and request that the executive director invalidate the sample. The system must provide copies of the routine positive and all repeat samples.~~]

[~~(C) The executive director may invalidate a sample if there are substantial grounds to believe that the total coliform-positive result is due to a circumstance or condition which does not reflect water quality in the distribution system. In this case, the system must still collect all repeat samples required by this section, and use them to determine compliance with the MCL for total coliforms in subsection (f) of this section. The system must provide written documentation which must state the specific cause of the total coliform-positive sample, and the action the system has taken, or will take, to correct this problem. The executive director may not invalidate a total coliform-positive sample solely on the grounds that all repeat samples are total coliform-negative.~~]

[~~(D) The executive director may invalidate a sample if the laboratory establishes that the sample was unsuitable for analysis.~~]

[~~(E) If a sample is invalidated, the system must collect another sample from the same location as the original sample within 24 hours of being notified, or as soon as possible if the laboratory is closed, and have it analyzed for the presence of total coliforms. The system must continue to resample within 24 hours and have the samples analyzed until it obtains a valid result.~~]

(5) Culture analysis. If any routine or repeat sample is total coliform-positive, that total coliform-positive culture medium will be analyzed to determine if fecal coliforms or [~~*E. coli*~~] bacteria are present. If fecal coliforms or *E. coli* are present, the system must notify the executive director by the end of the day in accordance with subsection (g) of this section.

(d) Analytical requirements for microbial contaminants. Analytical procedures shall be performed in accordance with §290.119 of this title (relating to Analytical Procedures). Testing for microbial contaminants shall be performed at a laboratory certified by the executive director.

(1) Distribution coliform sample invalidation. The executive director may invalidate a distribution total coliform-positive sample if one of the following conditions is met.

(A) The executive director may invalidate a sample if the laboratory provides written notice that improper sample analysis caused the total coliform-positive result.

(B) The executive director may invalidate a sample if the results of repeat samples collected as required by this section determines that the total coliform-positive sample resulted from a domestic or other non-distribution system plumbing problem. The executive director cannot invalidate a sample on the basis of repeat sample results unless all repeat sample(s) collected at the same tap as the original total coliform-positive sample are also total coliform-positive, and all repeat samples collected within five service connections of the original tap are total coliform-negative. Under those circumstances, the system may cease resampling and request that the executive director invalidate the sample. The system must provide copies of the routine positive and all repeat samples.

(C) The executive director may invalidate a sample if there are substantial grounds to believe that the total coliform-positive result is due to a circumstance or condition which does not reflect water quality in the distribution system. In this case, the system must still collect all repeat samples required by this section, and use them to determine compliance with the MCL for total coliforms in subsection (f) of this section. The system must provide written documentation which must state the specific cause of the total coliform-positive sample, and the action the system has taken, or will take, to correct this problem. The executive director may not invalidate a total col-

iform-positive sample solely on the grounds that all repeat samples are total coliform-negative.

(D) The executive director may invalidate a sample if the laboratory provides written notice that the sample was unsuitable for analysis.

(E) If a sample is invalidated by the laboratory, the system must collect another sample from the same location as the original sample within 24 hours of being notified, or as soon as possible if the laboratory is closed, and have it analyzed for the presence of total coliform. The system must continue to resample within 24 hours and have the samples analyzed until it obtains a valid result.

(2) A groundwater system may obtain invalidation of a fecal indicator positive groundwater source sample if the conditions of subparagraphs (A) and (B) of this paragraph apply. If the executive director invalidates a fecal indicator positive groundwater source sample, the system must collect another source sample as specified in subsection (c)(4) of this section within 24 hours of being notified of the invalidation.

(A) Notice from the laboratory must document that improper sample analysis occurred. If a laboratory invalidates a sample, the system must collect another sample from the same location as the original sample within 24 hours of being notified of the invalidated sample, and have it analyzed for the presence of *E. coli*. The system must continue to re-sample within 24 hours and have the samples analyzed until it obtains a valid result. If approved by the executive director, the 24-hour time limit may be extended.

(B) The executive director may invalidate the sample if the system provides written documentation that there is substantial evidence that a fecal indicator positive groundwater source sample is not related to source water quality. If the executive director invalidates a sample, the system must collect another sample from the same location as the original sample within 24 hours of being notified of the invalidated sample, and have it analyzed for the presence of *E. coli*.

(e) Reporting requirements for microbial contaminants. Upon the request of the executive director, the owner or operator of a public water system must provide the executive director with a copy of the results of any test, measurement, or analysis required by this subsection. The copies must be submitted within ten days of the request or within ten days of their receipt by the public water system, whichever is later. The copies must be mailed to the [~~Texas Natural Resource Conservation Commission,~~] Water Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

(f) Compliance determination for microbial contaminants. Compliance with the requirements of this section shall be determined using the following criteria each month that the system is in operation.

(1) A system commits an acute MCL violation if:

(A) A repeat distribution system sample is fecal coliform-positive or *E. coli [~~Escherichia coli~~]*-positive; or

(B) A total coliform-positive repeat distribution system sample follows a fecal coliform-positive or *E. coli* [~~Escherichia coli~~]-positive routine distribution system sample.

(2) A system that collects at least 40 routine distribution coliform [~~bacteriological~~] samples per month commits a nonacute MCL violation if more than 5.0% of the samples collected during a month are total coliform-positive, but none of the initial or repeat samples are fecal coliform-positive or *E. coli*[~~Escherichia coli~~]-positive.

(3) A system that collects fewer than 40 routine distribution coliform samples per month commits a nonacute MCL violation if more than one sample collected during a month is total coliform-positive, but none of the initial or repeat samples are fecal coliform-positive or *E. coli*[~~Escherichia coli~~]-positive.

(4) A public groundwater system that is required to collect raw source samples, commits a treatment technique violation if any source sample is found to be positive for *E. coli* or other approved fecal indicator. A public groundwater system is required to conduct corrective action as described in §290.116 of this title (relating to Groundwater Corrective Actions and Treatment Techniques) if a source sample is confirmed positive for *E. coli* or other fecal indicators.

(5) [~~(4)~~] A public water system that fails to provide the required number of suitable distribution coliform samples commits a monitoring violation.

(6) A public water system that fails to provide the required number of suitable raw source samples commits a monitoring violation.

(7) [~~(5)~~] A public water system that fails to report the results of the monitoring tests required by this section commits a reporting violation.

(8) A public water system that fails to do a required public notice or certify that notification has been performed commits a public notice reporting violation.

(9) [~~(6)~~] Results of all routine and repeat distribution coliform samples not invalidated by the executive director must be included in determining compliance with the MCL for total coliforms.

(10) [~~(7)~~] Distribution coliform samples ~~Samples~~ invalidated by the executive director shall not be included in determining compliance with the MCL for total coliforms.

(11) [~~(8)~~] Special purpose samples, such as those taken to determine whether disinfection practices are sufficient following pipe placement, replacement, or repair, shall not be used to determine compliance with the MCL for microbiological contaminants.

(g) Public notification for microbial contaminants. A system that is out of compliance with the requirements described in this section must notify the public using the procedures described in §290.122 of this title (relating to Public Notification) for microbial contamination.

(1) A public water system that commits an acute MCL violation for microbial contaminants must notify the water system customers in accordance with the boil water notice requirements of §290.46(q) [~~§290.46(s)(3)~~] of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems) and the public notice requirements of §290.122(a) of this title.

(2) A public groundwater system that receives a valid *E. coli* or other fecal indicator positive source sample must notify the water system customers in accordance with the requirements of §290.122(a)(1)(F) of this title. The system must continue to notify the public annually until the fecal contamination in the source water is determined by the executive director to be corrected as specified under §290.116 of this title.

(3) [~~(2)~~] A public water system that has fecal coliforms or *E. coli*present must notify the executive director by the end of the day when the system is notified of the test result, unless the system is notified of the result after the commission's office is closed, in which case the system must notify the executive director before the end of the next business day.

(4) [~~(3)~~] A public water system which commits an MCL violation must report the violation to the executive director immedi-

ately after it learns of the violation, but no later than the end of the next business day, and notify the public in accordance with §290.122(b) of this title.

(5) [~~(4)~~] A public water system which has failed to comply with a coliform monitoring requirement must report the monitoring violation to the executive director within ten days after the system discovers the violation and notify the public in accordance with §290.122(c) of this title.

§290.110. Disinfectant Residuals.

(a) (No change.)

(b) Minimum and maximum acceptable disinfectant concentrations. Public water systems shall provide the minimum levels of disinfectants in accordance with the provisions of this section. Public water systems shall not exceed the maximum residual disinfectant levels (MRDLs) provided in this section. [~~The disinfection process at a system treating surface water or groundwater under the direct influence of surface water shall meet the treatment technique requirements provided in this section.~~]

(1) The disinfection process used by public water systems must ensure that water has been adequately disinfected before it enters the distribution system. [~~The disinfection protocols used by public water systems with surface water sources or groundwater sources that are under the direct influence of surface water must ensure that the total treatment process achieves at least 99.9% (3-log) inactivation or removal of Giardia lamblia cysts and at least 99.99% (4-log) inactivation or removal of viruses before the water is supplied to any consumer. The executive director may require additional levels of treatment in cases of poor source water quality.~~]

(A) The disinfection process used by public water systems treating surface water sources or groundwater sources that are under the direct influence of surface water must meet the requirements of §290.111(d) of this title (relating to Surface Water Treatment). [~~The disinfection process at a surface water treatment plant that uses coagulation, flocculation, sedimentation, and filtration facilities shall provide at least a 0.5-log inactivation of Giardia lamblia cysts and a 2-log inactivation of viruses.~~]

(B) The executive director may require the disinfection process used by public water systems treating groundwater sources that are not under the direct influence of surface water to meet the requirements of §290.116 of this title (relating to Groundwater Corrective Actions and Treatment Techniques). [~~The disinfection process at a surface water treatment plant or a plant treating groundwater under the direct influence of surface water that uses microfiltration or ultrafiltration processes shall provide at least a 4-log inactivation of viruses.~~]

(C) (No change.)

(2) The residual disinfectant concentration in the water entering the distribution system shall be at least 0.2 milligram per liter (mg/L) free chlorine or 0.5 mg/L chloramine.

(3) - (4) (No change.)

(5) The running annual average of the free chlorine or chloramine residual of the water within the distribution system shall not exceed an MRDL of 4.0 mg/L.

[~~(A) Effective January 1, 2002, public water systems that serve at least 10,000 people and use surface water sources or groundwater sources that are under the influence of surface water must comply with the MRDL for chlorine and chloramine.~~]

[~~(B) Effective January 1, 2004, all community water systems and nontransient, noncommunity water systems must comply with the MRDL for chlorine and chloramine.~~]

(c) Monitoring requirements. Public water systems shall monitor the performance of the disinfection facilities to ensure that appropriate disinfectant levels are maintained. All monitoring conducted pursuant to the requirements of this section must be conducted at sites designated in the public water system's monitoring plan.

[~~(1) Public water systems that treat surface water sources or groundwater sources under the direct influence of surface water must verify that they meet the disinfection requirements of subsection (b)(1) of this section.~~]

[~~(A) The disinfectant residual, pH, temperature, and flow rate of the water in each disinfection zone must be measured at least once each day during a time when peak hourly raw water flow rates are occurring.~~]

[~~(B) Disinfection contact time will be based on tracer study data or a theoretical analysis submitted by the system owner or their designated agent and approved by the executive director and the actual flow rate that is occurring at the time that monitoring occurs.~~]

[~~(C) Treatment plants that fail to demonstrate an appropriate level of treatment must repeat these tests at four-hour or shorter intervals until compliance has been reestablished.~~]

(1) [~~(2)~~] Public water systems that treat surface water or groundwater under the direct influence of surface water must verify that they meet the disinfection requirements of subsection (b)(2) of this section.

(A) Public water systems that treat surface water or groundwater under the direct influence of surface water and sell treated water on a wholesale basis or serve more than 3,300 people must continuously monitor and record the disinfectant residual of the water entering the distribution system. If there is a failure in the continuous monitoring equipment, grab sampling every four hours may be conducted in lieu of continuous monitoring, but for no more than five working days following the failure of the equipment.

(B) Public water systems that treat surface water or groundwater under the direct influence of surface water, serve 3,300 or fewer people and do not sell treated water on a wholesale basis must monitor and record the disinfectant residual of the water entering the distribution system with either continuous monitors or grab samples.

(i) If a system uses grab samples, the samples must be collected on an ongoing basis at the frequency prescribed in the following table.

Figure: 30 TAC §290.110(c)(1)(B)(i)

[~~Figure: 30 TAC §290.110(c)(2)(B)(i)~~]

(ii) The grab samples cannot be taken at the same time and the sampling interval is subject to the executive director's review and approval.

(iii) Treatment plants that use grab samples and fail to detect an appropriate disinfectant residual must repeat the test at four-hour or shorter intervals until compliance has been reestablished.

(2) [~~(3)~~] Public water systems that treat groundwater or that purchase and resell treated water must, upon the request of the executive director, verify that they meet the disinfection requirements of subsection (b)(2) of this section.

(3) [~~(4)~~] Each treatment plant using chlorine dioxide must monitor and record the chlorine dioxide residual of the water entering the distribution system at least once each day. If the chlorine diox-

ide residual in the water entering the distribution system exceeds the MRDL contained in subsection (b)(3) of this section, the treatment plant must conduct additional tests.

(A) If the public water system does not have additional chlorination facilities in the distribution system, it must conduct three additional tests at the service connection nearest the treatment plant where an elevated chlorine dioxide residual was detected. The first additional test must be conducted within two hours after detecting an elevated chlorine dioxide residual at the entry point to the distribution system. The two subsequent tests must be conducted at six-hour to eight-hour intervals thereafter.

(B) If the public water system has additional chlorination facilities in the distribution system, it must conduct an additional test at the service connection nearest the treatment plant where an elevated chlorine dioxide residual was detected, an additional test at the first service connection after the point where the water is rechlorinated, and an additional test at a location in the far reaches of the distribution system. The additional test at the location nearest the treatment plant must be conducted within two hours after detecting an elevated chlorine dioxide residual at the entry point to the distribution system. The two other tests must be conducted at six-hour to eight-hour intervals thereafter.

(4) [~~(5)~~] Public water systems shall monitor the disinfectant residual at various locations throughout the distribution system.

(A) Public water systems that use groundwater or purchased water sources only and serve fewer than 250 connections and fewer than 750 people daily, must monitor the disinfectant residual at representative locations in the distribution system at least once every seven days.

(B) Public water systems that serve at least 250 connections or at least 750 people daily, and use only groundwater or purchased water sources must monitor the disinfectant residual at representative locations in the distribution system at least once per day.

(C) Public water systems using surface water sources or groundwater under the direct influence of surface water must monitor the disinfectant residual tests at least once per day at representative locations in the distribution system.

(D) All public water systems must monitor the residual disinfectant concentration each time that a bacteriological sample is collected, as specified in §290.109 of this title (relating to Microbial Contaminants).

(d) Analytical requirements. All monitoring required by this section must be conducted at a facility approved by the executive director and using methods that conform to the requirements of §290.119 of this title (relating to Analytical Procedures).

[~~(1) The pH analysis must be conducted using a pH meter with a minimum accuracy of plus or minus 0.1 pH units.~~]

[~~(2) The temperature of the water must be measured using a thermometer or thermocouple with a minimum accuracy of plus or minus 0.5 degrees Celsius.~~]

(1) [~~(3)~~] The free chlorine residual must be measured to a minimum accuracy of plus or minus 0.1 mg/L using one of the following methods:

(A) Amperometric titration;

(B) N,N-diethyl-*p*-phenylenediamine (DPD) [~~DPD~~] Ferrous titration; [~~or~~]

(C) DPD colorimetric; or [~~.~~]

(i) The free chlorine residual within the treatment plant and at the point where the treated water enters the distribution system must be measured with a colorimeter or spectrophotometer.

(ii) The free chlorine residual within the distribution system must be measured with a colorimeter, spectrophotometer, or color comparator test kit.

(D) Springaldizine (FACTS).

(2) [~~(4)~~] The chloramine residual must be measured to a minimum accuracy of plus or minus 0.1 mg/L using one of the following methods:

(A) Amperometric titration;

(B) DPD Ferrous titration; or

(C) DPD colorimetric.

(i) The chloramine residual within the treatment plant and at the point where the treated water enters the distribution system must be measured with a colorimeter or spectrophotometer.

(ii) The chloramine residual within the distribution system must be measured with a colorimeter, spectrophotometer, or color comparator test kit.

(3) [~~(5)~~] The chlorine dioxide residual must be measured to a minimum accuracy of plus or minus 0.05 mg/L using one of the following methods: [~~The chlorine dioxide residual must be measured to a minimum accuracy of plus or minus 0.05 mg/L using an amperometric titrator with platinum-platinum electrodes.~~]

(A) the amperometric titration method using a titrator with platinum-platinum electrodes;

(B) the spectrophotometric Lissamine Green B method, or

(C) with the written permission of the executive director, the DPD-glycine method using a colorimeter or spectrophotometer.

(e) Reporting requirements. Any owner or operator of a public water system subject to the provisions of this section is required to report to the executive director the results of any test, measurement, or analysis required by this section.

(1) Systems exceeding the MRDL for chlorine dioxide in subsection (b)(3) of this section must report the exceedance to the executive director within 24 hours of the event [~~at least by the end of the next business day~~].

(2) Public water systems that use surface water sources or groundwater sources under the direct influence of surface water must submit a Surface Water Monthly Operating Report (commission Form 0102C) or a Surface Water Monthly Operating Report for 2-Filter Plants (commission Form 0103) each month. [~~Monthly Operating Report for Surface Water Treatment Plants each month. Until January 1, 2001, systems must submit commission Form 0102A. After January 1, 2001, systems must submit commission Form 0102C.~~]

(3) (No change.)

(4) Public [~~Effective January 1, 2004, public~~] water systems that use purchased water or groundwater sources only must complete [~~submit~~] a Disinfection Level Quarterly Operating Report (DLQOR, commission Form 20067) [~~Quarterly Distribution Report for Public Water Systems~~] each quarter.

(A) Community and nontransient noncommunity public water systems must submit the Disinfection Level Quarterly Oper-

ating Report each quarter, by the tenth day of the month following the end of the quarter.

(B) Transient noncommunity public water systems must retain the Disinfection Level Quarterly Operating Reports and must provide a copy if requested by the executive director.

(5) Monthly and quarterly reports required by this section must be submitted to the [~~Texas Natural Resource Conservation Commission,~~] Water Supply Division, [~~P.O. Box 13087,~~] MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 by the tenth day of the month following the end of the reporting period.

(f) Compliance determinations. Compliance with the requirements of this section shall be determined using the following criteria.

(1) - (3) (No change.)

(4) A public water system that uses surface water sources or groundwater sources under the direct influence of surface water and fails to meet the requirements of subsection (b)(2) [~~(b)(1) or (2)~~] of this section for a period longer than four consecutive hours commits a nonacute treatment technique violation. A public water system that fails to conduct the additional testing required by subsection (c)(1)(B)(iii) [~~(c)(1)(C) and (c)(2)(B)(iii)~~] of this section also commits a nonacute treatment technique violation.

(5) A public water system that uses chlorine dioxide and exceeds the level specified in subsection (b)(3) of this section violates the MRDL for chlorine dioxide.

(A) (No change.)

(B) If a public water system violates the MRDL for chlorine dioxide and fails to collect each of the three additional distribution samples required by subsection (c)(3) [~~(c)(4)~~] of this section, the system commits an acute MRDL violation for chlorine dioxide.

(C) If a public water system violates the MRDL for chlorine dioxide but none of the three additional distribution samples violates the MRDL, the system commits a [~~an~~] nonacute MRDL violation for chlorine dioxide.

(6) - (9) (No change.)

(10) A public water system that fails to issue a required public notice or certify that it has issued that notice commits a violation.

(g) Public notification requirements. The owner or operator of a public water system that violates the requirements of this section must notify the executive director and the people served by the system.

(1) A public water system that fails to meet the requirements of subsection (b)(3) of this section, shall notify the executive director within 24 hours of the event [~~by the end of the next business day~~] and the customers in accordance with the requirements of §290.122 of this title (relating to Public Notification). [~~Public notification requirements. The owner or operator of a public water system that violates the requirements of this section must notify the executive director and the people served by the system.~~]

(A) - (B) (No change.)

(2) A public water system that uses surface water sources or groundwater sources under the direct influence of surface water and fails to meet the minimum disinfection requirements of subsection (b)(2) [~~(b)(1) or (2)~~] of this section shall notify the executive director by the end of the next business day and the customers in accordance with the requirements of §290.122(b) of this title.

(3) - (5) (No change.)

§290.111. Surface Water Treatment.

(a) Applicability. A public water system that treats surface water or groundwater under the direct influence of surface water must comply with the requirements of this section.

(1) A public water system that treats surface water must comply with the requirements of this section beginning on the effective date of the rule.

(2) A public water system that treats groundwater under the direct influence of surface water must comply with the requirements of this section beginning on a date specified by the executive director. This compliance date shall not exceed 18 months from the date that the executive director first notifies the system that the groundwater source is under the direct influence of surface water.

(3) A public water system that treats both surface water and groundwater under the direct influence of surface water must meet the compliance date in paragraph (1) of this subsection at plants that treat any surface water and must meet the compliance date in paragraph (2) of this subsection at plants that treat only groundwater under the direct influence of surface water.

(b) Raw surface water monitoring. A public water system that treats surface water or groundwater under the direct influence of surface water must conduct two rounds of special raw surface water monitoring at each surface water intake and at each well producing groundwater under the direct influence of surface water for the purpose of establishing minimum treatment technique requirements for *Cryptosporidium* and other pathogens. The executive director may waive the raw surface water monitoring requirements for an intake or a well if the combination of pathogen removal and disinfection processes used to treat the raw water achieves at least a 5.5-log total removal and inactivation of *Cryptosporidium parvum*.

(1) Raw water monitoring plans. A system must submit a proposed raw surface water monitoring plan when requested by the executive director. The proposed plan must identify all of the system's intakes and wells; provide the location of each raw water sampling point; include the parameters that will be monitored and the frequency and dates that samples will be collected; and specify the laboratories that will perform the analyses. Raw surface water monitoring must be conducted in accordance with a monitoring plan that has been approved by the executive director. The executive director shall not approve a raw surface water monitoring plan unless it indicates that the system will meet the requirements of 40 Code of Federal Regulations (CFR) §§141.701 - 141.707.

(2) Sampling location. A system must collect each raw water sample at a location approved by the executive director. Samples must be collected from the raw water line prior to any treatment and before the first point where a recycled stream is returned to the treatment process.

(3) Sampling parameters and frequency. A system must collect raw water samples at a frequency approved by the executive director.

(A) Unless the executive director approves an alternate sampling regimen, a system must monitor turbidity, *E. coli*, and *Cryptosporidium* levels in the raw water at least once each month for a period of not less than 24 consecutive months if the system:

(i) serves at least 10,000 people; or

(ii) is part of combined distribution system in which one or more systems serve at least 10,000 people and the system with the well or intake regularly provides water to another public water supply.

(B) A system that is not required to monitor under subparagraph (A) of this paragraph must either monitor in accordance with the requirements of subparagraph (A) of this paragraph or monitor turbidity and *E. coli* levels in their raw water at least once every two weeks for a period of not less than 12 consecutive months. A system that does not initially monitor for *Cryptosporidium* and has elevated *E. coli* levels must conduct additional raw water monitoring.

(i) A system must conduct additional monitoring if the average *E. coli* level exceeds 50 colony-forming units per 100 milliliters in the raw water produced by a surface water intake located on a river or flowing stream.

(ii) A system must conduct additional monitoring if the average *E.coli* level exceeds 10 colony-forming units per 100 milliliters in the raw water produced by a surface water intake not located on a river or flowing stream or the raw water produced by a well.

(iii) A system that must conduct additional monitoring must monitor turbidity, *E. coli*, and *Cryptosporidium* levels in the raw water at least twice each month for a period of not less than 12 consecutive months, or at least once each month for a period of not less than 24 consecutive months.

(C) The executive director may approve an alternate sampling frequency for intakes and wells that operate only part of the year.

(4) Sampling schedule and dates. A system must collect raw water samples in accordance with a schedule approved by the executive director.

(A) A system must collect a raw water sample no sooner than two days before the date approved by the executive director and no later than two days after the approved date, unless an extreme condition or situation exists that poses a danger to the sample collector.

(B) A system which is unable to collect a sample within this five-day period must collect the sample as close as possible to the approved date and must notify the executive director in writing why the sample was not collected on the approved date.

(5) Replacement samples. If, for any reason, the laboratory is unable to report a valid analytical result for a scheduled sample, the system must submit a replacement sample on a date approved by the executive director.

(6) Analytical requirements. Raw water samples collected pursuant to this subsection must be analyzed at an approved or certified laboratory.

(A) *Cryptosporidium* samples must be analyzed using one of the methods approved in Title 40 Code of Federal Regulations (CFR) §141.704(a) and by a laboratory that is approved under Environmental Protection Agency's (EPA) Laboratory Quality Assurance Evaluation Program for Analysis of *Cryptosporidium* in Water.

(B) *E. coli* samples must be analyzed using one of the methods approved in 40 CFR §136.3(a) for the enumeration of *E. coli* in source water and by a laboratory that is certified or accredited by the executive director.

(i) Systems must ensure that samples are maintained between 0ºC and 10ºC during storage and transportation to the laboratory.

(ii) The time between sample collection and the initiation of the analysis may not exceed 30 hours without the prior approval of the executive director.

(iii) The executive director may allow up to 48 hours between sample collection and the initiation of the analysis if the analysis is conducted by the Colilert reagent version of Standard Method 9223B.

(C) Turbidity samples must be analyzed using a method and at a laboratory approved by the executive director.

(7) Reporting requirements for raw surface water sample results. The owner or operator of a public water system must provide to the executive director with a copy of the results of any test, measurement, or analysis required by this subsection.

(A) Results must be submitted using the Raw Surface Water Sampling Report (commission Form 20358) or in another format that is approved by the executive director and contains the information required by 40 CFR §141.706(e).

(i) If the sample was not collected within the 5-day window described in paragraph (4)(A) of this subsection, the result must be accompanied by the information required in paragraph (4)(B) of this subsection.

(ii) If the laboratory report indicates that a valid analytical result could not be reported, the laboratory report must be accompanied by a request to collect a replacement sample.

(B) The results must be submitted within ten days of their receipt by the public water system and no later than 10 days after the end of the first month following the month that the sample was collected.

(C) The results and any additional information must be mailed to the Water Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

(c) Treatment technique requirements. A system that treats surface water or groundwater under the direct influence of surface water must meet minimum treatment technique requirements before the water reaches the entry point to the distribution system.

(1) The combination of pathogen removal and disinfection processes used by a public water system must achieve at least a 4.0-log removal/inactivation of viruses.

(2) The combination of pathogen removal and disinfection processes used by a public water system must achieve at least a 3.0-log removal/inactivation of *Giardia lamblia*.

(3) A public water system that is required by subsection (b) of this section to conduct raw surface water monitoring must comply with the requirements of this paragraph.

(A) The average *Crytosporidium* level and Bin Classification shall be determined in accordance with the requirements established by 40 CFR §141.710.

(B) The combination of pathogen removal and disinfection processes must achieve the removal/inactivation of *Cryptosporidium parvum* specified in the following table beginning 36 months after being assigned a Bin Classification by the executive director.
Figure: 30 TAC §290.111(c)(3)(B)

(C) A system that has been assigned to Bin 3 or Bin 4 must achieve at least 1.0-log removal/inactivation of *Cryptosporidium* using one or a combination of the following: bag filters, cartridge filters, chlorine dioxide, membranes, ozone, or ultraviolet light.

(D) Prior to the effective date of subparagraph (B) of this paragraph, the combination of disinfection and filtration processes used by a public water system to treat for *Cryptosporidium* must

achieve at least a 2.0-log removal/inactivation of *Cryptosporidium parvum*.

(4) The combination of disinfection and filtration processes at plants that do not monitor each source in accordance with the requirements of subsection (b) of this section must achieve at least a 5.5-log removal /inactivation of *Cryptosporidium parvum*.

(5) The executive director may require additional levels of treatment in cases of poor source water quality.

(6) The executive director may establish minimum design, operational, and reporting requirements for watershed control programs and treatment processes used to meet the treatment technique requirements of this subsection.

(d) Microbial inactivation requirements. A system that treats surface water or groundwater under the direct influence of surface water must meet minimum disinfection requirements before the water is supplied to any consumer.

(1) Inactivation table. The disinfection process must achieve the minimum microbial inactivation levels shown in the following table.
Figure: 30 TAC §290.111(d)(1)

(A) The disinfection process at treatment plants not described in the Microbial Inactivation Requirements table must provide the level of disinfection required by the executive director.

(B) The executive director may require additional levels of treatment in cases of poor source water quality.

(C) The executive director may reduce the inactivation requirement for plants that meet the individual filter effluent performance criteria contained in subsection (g)(1) of this section and have been assigned a Bin 1 classification under the provisions of subsection (c)(3) of this section.

(D) A system that fails to meet the inactivation requirements of this section for a period of longer than four consecutive hours commits a nonacute treatment technique violation. A system that fails to conduct the additional testing required by subsection (d)(2)(C) of this section also commits a nonacute treatment technique violation.

(E) A system that has a plant assigned a Bin 2, 3, or 4 classification under the provisions of subsection (c)(3) of this section and uses ultraviolet light (UV) disinfection facilities to meet the treatment technique requirements for *Cryptosporidium* must meet the nactivation requirements of this subsection in at least 95% of the water treated each month.

(2) Monitoring requirements for chemical disinfectants. Public water systems must monitor the performance of the disinfection facilities to ensure that appropriate disinfectant levels are maintained. All monitoring conducted pursuant to the requirements of this subsection must be conducted at sites designated in the public water system's monitoring plan.

(A) The disinfectant residual, pH, temperature, and flow rate of the water in each disinfection zone must be measured at least once each day during a time when peak hourly raw water flow rates are occurring.

(B) Disinfection contact time will be based on tracer study data or a theoretical analysis submitted by the system owner or their designated agent and approved by the executive director and the actual flow rate that is occurring at the time that monitoring occurs.

(C) Treatment plants that fail to demonstrate an appropriate level of treatment must repeat these tests at four-hour or shorter intervals until compliance has been reestablished.

(3) Monitoring requirements for UV disinfection facilities. Public water systems must monitor the performance of the UV disinfection facilities.

(A) A system must continuously monitor and record UV intensity as measured by a UV sensor, lamp status, the flow rate through the unit, and other parameters prescribed by the executive director to ensure that the units are operating within validated conditions.

(B) A system with a plant that has been assigned a Bin 2, 3, or 4 classification under the provisions of subsection (c)(3) of this section must also monitor and record the amount of water treated by each UV unit each month and the amount of water produced each month when the unit was not operating within validated conditions.

(4) Analytical requirements. All monitoring required by this subsection must be conducted at a facility approved by the executive director and using methods that conform to the requirements of §290.119 of this title (relating to Analytical Procedures).

(A) The pH analysis must be conducted using a pH meter with a minimum accuracy of plus or minus 0.1 pH units.

(B) The temperature of the water must be measured using a thermometer or thermocouple with a minimum accuracy of plus or minus 0.5 degrees Celsius.

(C) The free chlorine residual must be measured to a minimum accuracy of plus or minus 0.1 milligrams per liter (mg/L) using one of the following methods:

(i) Amperometric titration;

(ii) DPD Ferrous titration;

(iii) a DPD method that uses a colorimeter or spectrophotometer; or

(iv) Springaldizine (FACTS).

(D) The chloramine residual must be measured to a minimum accuracy of plus or minus 0.1 mg/L using one of the following methods:

(i) Amperometric titration;

(ii) DPD Ferrous titration; or

(iii) a DPD method that uses a colorimeter or spectrophotometer.

(E) The chlorine dioxide residual must be measured to a minimum accuracy of plus or minus 0.05 mg/L using one of the following methods:

(i) Amperometric titrator with platinum-platinum electrodes; or

(ii) Lissamine Green B.

(F) The ozone residual must be measured to a minimum accuracy of plus or minus 0.05 mg/L using the Indigo Method and using a colorimeter or spectrophotometer.

(G) The UV dose must be measured by a calibrated sensor approved by the executive director.

(e) Filtration requirements for conventional filters. A system that uses granular media filters to treat surface water or groundwater

under the direct influence of surface water must meet minimum filtration requirements before the water is supplied to any consumer.

(1) Treatment technique requirements for combined filter effluent. Treatment plants using conventional media filtration must meet the following turbidity requirements.

(A) The turbidity level of the combined filter effluent must never exceed 1.0 nephelometric turbidity unit (NTU).

(B) The turbidity level of the combined filter effluent must be 0.3 NTU or less in at least 95% of the samples tested each month.

(2) Performance criteria for individual filter effluent. The filtration techniques must ensure the public water system meets the following performance criteria.

(A) The turbidity from each individual filter effluent should never exceed 1.0 NTU.

(B) At a public water system that serves 10,000 people or more, the turbidity from each individual filter effluent should not exceed 0.5 NTU at four hours after the individual filter is returned to service after backwash or shutdown.

(3) Routine turbidity monitoring requirements. A system must monitor the performance of its filtration facilities.

(A) A system that serves fewer than 500 people and continuously monitors the turbidity level of each individual filter must measure and record the turbidity level of the combined filter effluent at least once each day that the plant is in operation.

(B) A system that serves at least 500 people and continuously monitors the turbidity level of each individual filter must measure and record the turbidity level of the combined filter effluent at least every four hours that the system serves water to the public.

(C) Except as provided in subparagraph (D) of this paragraph, a system must continuously monitor the filtered water turbidity at the effluent of each individual filter and record the turbidity value every 15 minutes.

(D) A system that serves fewer than 10,000 people and monitors combined filter effluent turbidity in lieu of individual filter effluent turbidity under the provisions of §290.42(d)(11)(E)(ii) of this title (relating to Water Treatment) must:

(i) continuously monitor the turbidity of the combined filter effluent and record the turbidity value every 15 minutes; and

(ii) measure and record the turbidity level at the effluent of each filter at least once each day the plant is in operation.

(4) Special investigation requirements. A system which fails to produce water with acceptable turbidity levels must investigate the cause of the problem and take appropriate corrective action. The executive director can waive these special monitoring requirements for systems that have a corrective action schedule approved by the executive director.

(A) A public water system that fails to meet the turbidity criteria specified in subsection (e)(2) of this section must conduct additional monitoring.

(i) Each time a filter exceeds an applicable filtered water turbidity level specified in subsection (e)(2) of this section for two consecutive 15-minute readings, the public water system must either identify the cause of the exceedance or produce a filter profile on the filter within seven days of the exceedance.

(ii) Each time a filter exceeds the filtered turbidity level specified in subsection (e)(2)(A) of this section for two consecutive 15-minute readings on three separate occasions during any consecutive three-month period, the public water system must conduct a filter assessment on the filter within 14 days of the third exceedance.

(iii) Each time the filtered water turbidity level for a specific filter or any combination of individual filters exceeds 2.0 NTU on two consecutive 15-minute readings during two consecutive months, the public water system must participate in a third-party comprehensive performance evaluation (CPE). If the system serves at least 10,000 people, the CPE must be conducted within 90 days of the first exceedance in the second month. If the system serves fewer than 10,000 people, the CPE must be conducted within 120 days of the first exceedance in the second month.

(B) A system that serves fewer than 10,000 people, monitors combined filter effluent turbidity in lieu of individual filter effluent turbidity, and fails to meet the turbidity criteria in subsection (e)(1)(A) of this section must conduct additional monitoring. The executive director may waive these special monitoring requirements for systems that have a corrective action schedule approved by the executive director.

(i) Each time the combined filter effluent turbidity level exceeds 1.0 NTU for two consecutive 15-minute readings, the public water system must either identify the cause of the exceedance or complete a filter profile on the combined filter effluent within seven days of the exceedance.

(ii) Each time the combined filter effluent turbidity level exceeds 1.0 NTU for two consecutive 15-minute readings on three separate occasions during any consecutive three-month period, the public water system must conduct a filter assessment on each filter within 14 days of the third exceedance.

(iii) Each time the combined filter effluent turbidity level exceeds 2.0 NTU on two consecutive 15-minute readings during two consecutive months, the public water system must participate in a third-party comprehensive performance evaluation within 120 days of the first exceedance in the second month.

(5) Analytical requirements for turbidity. All monitoring required by this subsection must be conducted by a facility approved by the executive director and using methods that conform to the requirements of §290.119 of this title (relating to Analytical Procedures). Equipment used for compliance measurements must be maintained and calibrated in accordance with §290.46(s) of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems).

(A) Turbidity must be measured with turbidimeters that use one of the following methods:

(i) EPA Method 180.1 and Standard Method 2130B;

(ii) Great Lakes Instruments Method 2; or

(iii) Hach FilterTrak Method 10133.

(B) A system monitoring the performance of individual filters with on-line turbidimeters and recorders may monitor combined filter effluent turbidity levels by either continuously monitoring turbidity levels with an on-line turbidimeter or measuring the turbidity level in grab samples with a bench-top turbidimeter.

(C) Continuous turbidity monitoring must be conducted using a continuous, on-line turbidimeter and a device that records the turbidity level reading at least once every 15 minutes.

(i) Turbidity data may be recorded electronically by a supervisory control and data acquisition system (SCADA) or on a strip chart. The recorder must be designed so that the operator can accurately determine the turbidity level readings at 15-minute intervals.

(ii) If there is a failure in the continuous turbidity monitoring equipment at a system serving 10,000 people or more, the system must conduct grab sampling every four hours in lieu of continuous monitoring, but for no more than five working days following the failure of the equipment.

(iii) If the continuous turbidity monitoring equipment at a system serving fewer than 10,000 people malfunctions, the system must conduct grab sampling every four hours in lieu of continuous monitoring, but for no more than 14 working days following the failure of the equipment.

(D) A system that monitors combined filter effluent turbidity in lieu of individual filter effluent turbidity under §290.42(d)(11)(E)(ii) of this title must monitor the performance of individual filters using a bench-top turbidimeter.

(f) Filtration requirements for other filters. A system that uses cartridge filters, membrane filters, or other unconventional filtration systems to treat surface water or groundwater under the direct influence of surface water must meet minimum filtration requirements before the water is supplied to any consumer.

(1) Treatment technique requirements. A system that uses unconventional filtration technologies such as membrane filters or cartridge filters must meet treatment technique requirements prescribed by the executive director.

(A) The filtration facilities must meet turbidity limits established by the executive director.

(B) The filtration facilities must be operated and maintained in accordance with requirements that the executive director determines are needed to demonstrate the amount of *Giardia* and *Cryptosporidium* removal achieved.

(2) Monitoring requirements. A system must monitor the performance of its filtration facilities.

(A) A system that serves fewer than 500 people and continuously monitors the turbidity level of each individual cartridge or membrane unit must measure and record the turbidity level of the combined effluent at least once each day that the plant is in operation.

(B) A system that serves at least 500 people and continuously monitors the turbidity level of each individual cartridge or membrane unit must measure and record the turbidity level of the combined effluent at least every four hours that the system serves water to the public.

(C) A system using membranes must use a method approved by the executive director to continuously monitor the quality of the water produced by each membrane unit and record the monitoring results at least once every five minutes. The executive director may approve monitoring parameters other than turbidity and decrease the frequency to once every 15 minutes if the approved operating parameters will allow consecutive readings to be obtained between backwash or backflush cycles.

(D) A system using membranes must conduct direct integrity testing on each membrane unit using a procedure approved by the executive director.

(i) Direct integrity tests must be conducted in a manner that will detect a membrane defect of 3 microns or smaller and demonstrates a removal efficiency equal to or greater than the removal credit awarded to the membrane filtration process by the executive director.

(ii) Direct integrity test method must calculate the log removal value for a 3-micron size particle and establish an upper control limit which assures that the unit is capable of meeting the removal credit approved by the executive director.

(iii) A system that has been assigned a Bin 1 classification under the provisions of subsection (c)(3)(B) of this section must conduct direct integrity tests at least once every seven days. The executive directed may reduce the testing requirements for other membrane units.

(iv) A system that has been assigned a Bin 2, 3, or 4 classification under the provisions of subsection (c)(3)(B) of this section must conduct direct integrity tests at least once each day that the membrane unit is used for filtration. The executive director may approve less frequent testing, based on demonstrated process reliability, the use of multiple barriers effective for *Cryptosporidium* removal or inactivation, or reliable process safeguards.

(v) A system must immediately conduct a direct integrity test on any membrane unit that produces filtered water with turbidity level above 0.15 NTU on two consecutive readings. The executive director must establish alternate site-specific control limits for systems that use other approved technology in lieu of turbidimeters to continuously monitor the performance of membrane units.

(vi) A system must immediately remove any membrane unit that fails a direct integrity test from service until the membrane modules in that unit are inspected and, if necessary, repaired. A membrane unit that has been removed from service may not be returned to service until it has passed a direct integrity test.

(E) A system that uses cartridge filters must continuously monitor the performance of the filtration process in a manner approved by the executive director.

(3) Analytical requirements. All monitoring required by this subsection must be conducted by a facility approved by the executive director and using methods that conform to the requirements of §290.119 of this title. Equipment used for compliance measurements must be maintained and calibrated in accordance with §290.46(s) of this title.

(A) Turbidity of the combined effluent must be measured with turbidimeters that meet the requirements of subsection (e)(5)(A) of this section.

(B) The turbidity of the water produced by each membrane unit must be measured using the Hach FilterTrak Method 10133. The executive director may approve the use of alternative technology to monitor the quality of the water produced by each membrane unit.

(C) A system continuously monitoring the performance of individual cartridges or membrane units may monitor combined effluent turbidity levels by either continuously monitoring turbidity levels with an on-line turbidimeter, or by measuring the turbidity level in grab samples with a bench-top turbidimeter.

(D) Data collected from on-line instruments may be recorded electronically by a SCADA system or on a strip chart recorder. The recorder must be designed so that the operator can accurately determine the value of readings at the monitoring interval approved by the executive director.

(i) If there is a failure in the continuous monitoring equipment at a system serving 10,000 people or more, the system must conduct grab sampling every four hours in lieu of continuous monitor-

ing, but for no more than five working days following the failure of the equipment.

(ii) If there is a failure in the continuous monitoring equipment at a system serving fewer than 10,000 people, the system must conduct grab sampling every four hours in lieu of continuous monitoring, but for no more than 14 working days following the failure of the equipment.

(E) A system that uses cartridge filters and does not continuously monitor the turbidity of each filter unit must monitor the performance of individual filters at least once each day using a bench-top turbidimeter.

(g) Other treatment credits for systems in Bins 2 through 4. The executive director may grant additional pathogen removal and inactivation credit to systems that meet enhanced design, operational, maintenance, and reporting requirements.

(1) Individual filter effluent. The executive director may approve an additional 1.0-log removal credit for *Giardia* and *Cryptosporidium* to a treatment plant that uses conventional granular media filters.

(A) The executive director will approve the additional credit for a plant if:

(i) the system continuously monitored the filtered water turbidity at the effluent of each individual filter and recorded the turbidity value every 15 minutes that the filter was sending water to the clearwell;

(ii) the turbidity level at each individual filter effluent is less than or equal to 0.15 NTU in at least 95% of the measurements recorded during the month; and

(iii) no individual filter produced water with turbidity level above 0.3 NTU in two consecutive 15-minute readings.

(B) The executive director may also approve the additional credit for a plant that does not meet the requirements of subparagraph (A) of this paragraph if:

(i) the executive director determines that the failure to meet the requirements of subparagraph (A) of this paragraph could not have been prevented through optimizing plant operations, design, or maintenance; and

(ii) the system has experienced no more than two such failures within the most recent 12 months.

(2) Combined filter effluent. The executive director may approve an additional 0.5-log removal credit for *Cryptosporidium* to a treatment plant that uses conventional granular media filters if:

(A) the system continuously monitored the filtered water turbidity at the effluent of each individual filter and recorded the turbidity value every 15 minutes that the filter was sending water to the clearwell;

(B) the turbidity level at the combined filter effluent is less than or equal to 0.15 NTU in at least 95% of the measurements recorded during the month; and

(C) the plant does not receive additional treatment credit under paragraph (1) of this subsection.

(3) Second stage filtration. The executive director will approve an additional 0.5-log removal credit for *Giardia* and *Cryptosporidium* to a treatment plant that uses a second, separate stage of conventional granular media filters if:

(A) the filters in both stages meet minimum design criteria approved by the executive director;

(B) all of the water produced by the plant passes through both stages of filtration;

(C) the system continuously monitored the filtered water turbidity at the effluent of each individual filter in the first stage of filtration and recorded the turbidity value every 15 minutes that the filter was sending water to the clearwell; and

(D) no individual filter in the first stage of filtration produced water with turbidity level above 1.0 NTU in two consecutive 15-minute readings.

(4) Other pathogen control strategies. The executive director may approve an additional removal or inactivation credit for other pre-filtration, filtration, or post-filtration strategies that can demonstrate effective, consistent levels of enhanced pathogen control.

(A) The alternative strategy must achieve a quantifiable reduction in the risk of waterborne disease in all of the treated water produced by the plant.

(B) The alternative strategy must conform to any applicable requirement of 40 CFR §§141.715 - 141.720.

(C) The executive director may establish minimum site-specific design, operational, maintenance, and reporting requirements for any alternative strategy used to meet minimum treatment technique requirements of subsection (c) of this section.

(D) The executive director may not approve additional removal credit under the provisions of this paragraph to any strategy that includes a treatment process has been assigned additional removal or inactivation credit under any other provision of this subsection.

(h) Reporting requirements. Public water systems must properly complete and submit periodic reports to demonstrate compliance with this section.

(1) A system that has a turbidity level exceeding 1.0 NTU in the combined filter effluent must consult with the executive director within 24 hours.

(2) A system that continuously monitors the performance of individual filters must submit a Surface Water Monthly Operating Report (commission Form 0102C) each month for each plant that treats surface water sources or groundwater sources under the direct influence of surface water.

(3) A system that monitors combined filter effluent turbidity in lieu of individual filter effluent turbidity under §290.42(d)(11)(E)(ii) of this title must submit a Surface Water Monthly Operating Report for 2-Filter Plants (commission Form 0103) each month for each plant that treats surface water or groundwater under the direct influence of surface water.

(4) A system that must complete the additional monitoring required by subsection (e)(4)(A)(i) or (e)(4)(B)(i) of this section must submit a Filter Profile Report for Individual Filters (commission Form 10276) with its Surface Water Monthly Operating Report.

(5) A system that must complete the additional monitoring required by subsection (e)(4)(A)(ii) or (e)(4)(B)(ii) of this section must submit a Filter Assessment Report for Individual Filters (commission Form 10277) with its Surface Water Monthly Operating Report.

(6) A system that must complete the additional monitoring required by subsection (e)(4)(A)(iii) or (e)(4)(B)(iii) of this section must submit a Comprehensive Performance Evaluation Request Form

(commission Form 10278) with its Surface Water Monthly Operating Report.

(7) A system that uses membranes must submit a Membrane Monthly Operating Report (commission Form 20356) for each plant that treats surface water or groundwater under the direct influence of surface water. The report must accompany the plant's Surface Water Monthly Operating Report.

(8) A system that uses UV disinfection to meet the minimum treatment technique requirements for surface water or groundwater under the direct influence of surface water must submit a UV Monthly Operating Report (commission Form 20357) with its Surface Water Monthly Operating Report. The report must accompany the plant's Surface Water Monthly Operating Report.

(9) A system must submit any additional reports required by the executive director to verify the level of pathogen removal or inactivation achieved by the system's treatment plants.

(10) Periodic reports required by this section must be submitted to the Water Supply Division, Texas Commission on Environmental Quality, MC 155, P.O. Box 13087, Austin, Texas 78711-3087 by the tenth day of the month following the end of the reporting period.

(i) Compliance determination. Compliance with the requirements of this section must be determined using the criteria of this subsection.

(1) A public water system that fails to complete source water monitoring or conduct the routine monitoring tests and any applicable special investigations required by this section commits a monitoring violation.

(2) A public water system that fails to submit a report required by subsection (h) of this section commits a reporting violation.

(3) A public water system using conventional filters that has a turbidity level exceeding 5.0 NTU in the combined filter effluent commits an acute treatment technique violation.

(4) A public water system using membrane filters that has a turbidity level exceeding 1.0 NTU in the combined filter effluent commits an acute treatment technique violation.

(5) Except as provided in paragraphs (3) and (4) of this subsection, a public water system that violates the requirements of subsections (c), (d)(1), (e)(1), and (f)(1) of this section commits a nonacute treatment technique violation.

(6) A system that fails to correct the performance-limiting factors identified in a comprehensive performance evaluation conducted under the requirements of subsection (e)(4)(A)(iii) or (e)(4)(B)(iii) of this section commits a violation.

(7) A system that fails to properly issue a public notice required by subsection (j) of this section commits a violation.

(j) Public notification. The owner or operator of a public water system that violates the requirements of this section must notify the executive director and the people served by the system.

(1) A public water system that commits an acute treatment technique violation must notify the executive director and the water system customers of the acute violation within 24 hours in accordance with the requirements of §290.46(q) of this title and §290.122(a) of this title (relating to Public Notification).

(2) A public water system that has a turbidity level exceeding 1.0 NTU in the combined filter effluent must consult with the executive director within 24 hours of the violation.

(A) Based on the results of the consultation, the executive director will determine whether the water system must notify its customers in accordance with the requirements of §290.122(a) or (b) of this title.

(B) A water system that fails to consult with the executive director as required by this paragraph must notify its customers in accordance with the requirements of §290.122(a) of this title.

(3) Except as provided in paragraph (1) and (2) of this subsection, a public water system that fails to meet the treatment technique requirements of subsections (c),(d)(1),(e)(1), or (f)(1) must notify the executive director by the end of the next business day and the water system customers in accordance with the requirements of §290.122(b) of this title.

(4) A public water system that fails to conduct the monitoring required by this section must notify its customers of the violation in accordance with the requirements of §290.122(c) of this title.

§290.112. Total Organic Carbon (TOC).

(a) (No change.)

(b) Treatment technique. Systems must achieve the Step 1 removal requirements in paragraph (1) of this subsection, meet one of the alternative compliance criteria described in paragraph (2) of this subsection, or apply for the alternative Step 2 removal requirements described in paragraph (3) of this subsection.

(1) Systems must determine their ability to meet the Step 1 removal requirements given in the following table. A water treatment plant's Step 1 total organic carbon (TOC) [~~TOC~~] required percent removal is based upon plant's source water TOC and alkalinity. Step 1 TOC percent removal requirements are indicated in the following table. Systems practicing softening are evaluated based on the Step 1 TOC removal in the far-right column (Source water alkalinity >120 milligrams per liter (mg/L) [~~mg/L~~]) for the specified source water TOC.
Figure: 30 TAC §290.112(b)(1) (No change.)

(2) Systems may determine their ability to meet one of the eight alternative compliance criteria listed in this paragraph.

(A) - (B) (No change.)

(C) A system meets alternative compliance criteria Number 3 if: the system's source water TOC level is less than 4.0 mg/L, calculated quarterly as a running annual average; the source water alkalinity is greater than 60 mg/L (as calcium carbonate (CaCO3), calculated quarterly as a running annual average; and the total trihalomethanes (TTHM) [~~TTHM~~] and haloacetic acid-group of five (HAA5) [~~HAA5~~] running annual averages are no greater than 0.040 mg/L and 0.030 mg/L, respectively.

(D) (No change.)

(E) The system meets alternative compliance criteria Number 5 if the system's source water specific ultraviolet absorbance (SUVA) [~~SUVA~~], prior to any treatment, measured monthly, is less than or equal to 2.0 liters per milligram-meter (L/mg-m) [~~L/mg-m~~], calculated quarterly as a running annual average.

(F) (No change.)

(G) The system meets alternative compliance criteria Number 7 if the system practices softening, cannot achieve the Step 1 TOC removals required by paragraph [~~(b)~~](1) of this subsection, and has treated water alkalinity less than 60 mg/L (as CaCO3) and calculated quarterly as a running annual average.

(H) (No change.)

(3) (No change.)

(c) - (d) (No change.)

(e) Reporting requirements for TOC. Systems treating surface water or groundwater under the direct influence of surface water shall properly complete and submit periodic reports to demonstrate compliance with this section.

(1) The reports must be submitted to the [~~Texas Natural Resource Conservation Commission,~~] Water Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 by the tenth day of the month following the end of the reporting period.

(2) Public water systems must submit a Monthly Operational Report for Total Organic Carbon (commission Form 0879) [~~Control~~] each month.

[~~(A) Systems treating surface water or groundwater under the direct influence of surface water and serving 10,000 or more people must comply with these reporting requirements starting January 1, 2001.~~]

[~~(B) Systems treating surface water or groundwater under the direct influence of surface water must and serving less than 10,000 people must comply with these reporting requirements starting January 1, 2003.~~]

(3) A system that does not meet the Step 1 removal requirements must submit a Request for Alternate TOC Requirements at least 15 days before the end of the quarter.

(A) If the system meets alternative compliance criterion Number 3, subsection (b)(2)(C) of this section, the system must report the running annual average TTHM and HAA5 concentrations as determined under the requirements of §290.113 of this title (relating to Stage 1 Disinfection By-products (TTHM and HAA5)) or §290.115 of this title (relating to Stage 2 Disinfection By-products (TTHM and HAA5)).

(B) If the system meets alternative compliance criterion Number 4, subsection (b)(2)(D) of this section, the system must report the running annual average TTHM and HAA5 concentrations as determined under the requirements of §290.113 of this title or §290.115 of this title [~~(relating to Disinfection By-products (TTHM and HAA5))~~], and report all disinfectants used by the system during last 12 months.

(C) - (F) (No change.)

(f) Compliance determination. Compliance with the requirements of this section shall be based on the following criteria:

(1) - (3) (No change.)

(4) A public water system that fails to do a required public notice or certify that the public notice has been performed commits a public notice violation.

(g) (No change.)

§290.113. Stage 1 Disinfection By-products (TTHM and HAA5).

(a) Applicability for TTHM and HAA5. All community and nontransient, noncommunity water systems shall comply with the requirements of this section.

(1) Systems must comply with the Stage 1 requirements in this section until the date shown in the table entitled "Date to Start Stage 2 Compliance."

(2) Until the date shown in the table in paragraph (1) of this subsection, systems must continue to monitor according to this section.
Figure: 30 TAC §290.113(a)(2)

[~~(1) Effective January 1, 2002, community and nontransient, noncommunity public water systems that serve at least 10,000 people and use surface water sources or groundwater sources that are under the direct influence of surface water must comply with the maximum contaminant levels (MCLs) for total trihalomethanes (TTHM) and haloacetic acids (five) (HAA5).~~]

[~~(2) Effective January 1, 2004, all community and nontransient, noncommunity public water systems must comply with the MCL for TTHM and HAA5.~~]

[~~(3) Until January 1, 2004, public water systems using groundwater as a supply source and serving at least 10,000 people will be regulated in accordance with §290.115 of this title (relating to Transition Rule for Disinfection By-products).~~]

[~~(4) Until January 1, 2002, public water systems using surface water sources or groundwater sources that are under the direct influence of surface water must comply with the requirements of §290.115 of this title (relating to Transition Rule for Disinfection By-products).~~]

(b) Maximum contaminant level (MCL) for TTHM and HAA5. The running annual average concentration of total trihalomethanes (TTHM) and haloacetic acids (five) (HAA5) shall not exceed the maximum contaminant levels.

(1) The MCL for TTHM is 0.080 milligrams/liter (mg/L).

(2) (No change.)

(c) Monitoring requirements for TTHM and HAA5. Systems must take all TTHM and HAA5 samples during normal operating conditions. Monitoring shall be performed at locations and frequency specified in the system's monitoring plan.

(1) - (2) (No change.)

(3) Systems must routinely sample at the frequency and locations given in the following table entitled "Stage 1 Routine Monitoring Frequency and Locations for TTHM and HAA5."
Figure: 30 TAC §290.113(c)(3)
[~~Figure: 30 TAC §290.113(c)(3)~~]

(4) The executive director may reduce the monitoring frequency for TTHM and HAA5 as indicated in the following table entitled "Stage 1 Reduced Monitoring Frequency and Locations for TTHM and HAA5."
Figure: 30 TAC §290.113(c)(4)
[~~Figure: 30 TAC §290.113(c)(4)~~]

(A) - (C) (No change.)

(5) (No change.)

(d) (No change.)

(e) Reporting requirements for TTHM and HAA5. Upon the request of the executive director, the owner or operator of a public water system must provide the executive director with a copy of the results of any test, measurement, or analysis required by this subsection. The copies must be submitted within ten days of the request or within ten days of their receipt by the public water system, whichever is later. The copies must be mailed to the [~~Texas Natural Resource Conservation Commission,~~] Water Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

(f) - (g) (No change.)

§290.114. Other Disinfection By-products (Chlorite and Bromate).

(a) Chlorite. All community and nontransient noncommunity public water systems that use chlorine dioxide must comply with the requirements of this subsection.

(1) Maximum contaminant level (MCL) for chlorite. The chlorite concentration in the water in the distribution system shall not exceed an MCL of 1.0 milligrams per liter (mg/L).

(2) Monitoring requirements for chlorite. Public water systems shall measure the chlorite concentration at locations and intervals specified in the system's monitoring plan. All samples must be collected during normal operating conditions.

(A) (No change.)

(B) Each plant using chlorine dioxide must monitor the chlorite concentration in the water within the distribution system at each of the following three locations: at a location near the first customer of a plant using chlorine dioxide; at a location representative of the average residence time in the distribution system; and at a location reflecting maximum residence time in the distribution system. The group of three samples must be collected on the same day and is called a "three-sample set."

(i) - (iii) (No change.)

[~~*(iv)* Public water systems that serve fewer than 10,000 people are exempt from the requirements of subsection (a) of this section until January 1, 2004 if the public water system signs and complies with the requirements set forth by the executive director in a bilateral agreement.~~]

[~~*(v)* Public water systems that serve at least 10,000 people are exempt from the requirements of subsection (a) of this section until January 1, 2002 if the public water system signs and complies with the requirements set forth by the executive director in a bilateral agreement.~~]

(3) Analytical requirements for chlorite. Analytical procedures required by this section shall be performed in accordance with the requirements of §290.119 of this title (relating to Analytical Procedures).

(A) (No change.)

[~~(B) Before January 1, 2002, systems using chlorine dioxide in accordance with a bilateral compliance agreement with the executive director must have the chlorite concentration of the water within the distribution system analyzed using ion chromatography at a facility approved by the executive director.~~]

(B) [~~(C)~~] The [~~Beginning January 1, 2002, the~~] chlorite concentration of the water within the distribution system must be analyzed using ion chromatography at a facility certified by the executive director.

(4) Reporting requirements for chlorite. Public water systems that are subject to the provisions of this subsection must provide the executive director with the results of any test, measurement, or analysis required by this section.

(A) (No change.)

(B) Upon the request of the executive director, systems shall provide the executive director with a copy of the results of any chlorite test, measurement, or analysis required by subsection (a)(2)(B) of this section [~~§290.114(a)(2)(B) of this title~~] within ten days following receipt of the results of such test, measurement, or analysis.

(C) Reports and analytical results must be mailed to the [~~Texas Natural Resource Conservation Commission,~~] Water Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

(5) Compliance determination for chlorite. Compliance with the requirements of this subsection shall be based on the following criteria.

(A) - (C) (No change.)

(D) A public water system that fails to do a required public notice or certify that the public notice has been performed commits a public notice violation.

(6) (No change.)

(b) Bromate. Community and nontransient, noncommunity public water systems that use ozone must comply with the requirements of this subsection beginning on January 1, 2002.

(1) - (2) (No change.)

(3) Analytical requirements for bromate. Analytical procedures required by this section shall be performed in accordance with §290.119 of this title [~~(relating to Analytical Procedures)~~]. Testing for bromate shall be performed at a laboratory certified by the executive director [~~TDH Bureau of Laboratories~~].

(4) Reporting requirements for bromate. Upon the request of the executive director, the owner or operator of a public water system must provide the executive director with a copy of the results of any test, measurement, or analysis required by this subsection. The copies must be submitted within ten days of the request or within ten days of their receipt by the public water system, whichever is later. The copies must be mailed to the [~~Texas Natural Resource Conservation Commission,~~] Water Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

(5) Compliance determination for bromate. Compliance with the requirements of this subsection shall be determined using the following criteria.

(A) - (C) (No change.)

(D) A public water system that fails to do a required public notice or certify that the public notice has been performed commits a public notice violation.

(6) Public notification requirements for bromate. A public water system that violates the requirements of this subsection must notify the water system's customers and the executive director.

(A) A public water system that violates the MCL for bromate shall notify the customers in accordance with the requirements of §290.122(b) of this title [~~(relating to Public Notification)~~].

(B) (No change.)

§290.115. Stage 2 Disinfection By-products (TTHM and HAA5).

(a) Applicability for TTHM and HAA5. All community and nontransient, noncommunity water systems shall comply with the requirements of this section for total trihalomethanes (TTHM) and haloacetic acids (group of five) (HAA5).

(1) Systems must comply with the initial monitoring requirements starting on the dates given in subsection (c) of this section.

(2) Systems must comply with all of the additional requirements in this section starting on the date shown in the table entitled "Date to Start Stage 2 Compliance."
Figure: 30 TAC §290.115(a)(2)

(A) Systems required to conduct quarterly monitoring, must begin monitoring in the first full calendar quarter that includes the compliance date in the table titled "Date to Start Stage 2 Compliance."

(B) Systems required to conduct routine monitoring less frequently than quarterly must begin monitoring in the calendar month approved by the executive director in their IDSE report or revised monitoring plan identifying Stage 2 sample sites.

(b) Maximum contaminant levels (MCL) and operational evaluation levels (OELs) for TTHM and HAA5. Systems shall comply with MCLs and OELs.

(1) The locational running annual average (LRAA) concentration of TTHM and HAA5 shall not exceed the maximum contaminant levels. A public water system that exceeds a MCL shall determine compliance as described in subsection (f) of this section.

(A) The MCL for TTHM is 0.080 milligrams/liter (mg/L).

(B) The MCL for HAA5 is 0.060 mg/L.

(2) The OEL at any monitoring location is the sum of the two previous quarters' results plus twice the current quarter's result, divided by 4 to determine an average. A public water system that exceeds an OEL shall perform operation evaluation monitoring and reporting described in subsection (e) of this section.

(A) The OEL for TTHM is 0.080 mg/L.

(B) The OEL for HAA5 is 0.060 mg/L.

(c) Monitoring requirements for TTHM and HAA5. Monitoring shall be performed at locations and frequency specified in the system's monitoring plan as approved by the executive director.

(1) Monitoring locations. Systems must establish Stage 2 compliance monitoring sites throughout the distribution system at locations with the potential for relatively high disinfection by-product formation. Systems must determine Stage 2 compliance monitoring locations by the dates shown in the table titled "Date to Establish Stage 2 Sites."
Figure: 30 TAC §290.115(c)(1)

(A) Systems that perform initial distribution system evaluation (IDSE) sampling in accordance with subsection (c)(5) of this section must use the results to set Stage 2 compliance monitoring sites.

(B) Systems that do not perform IDSE sampling must set Stage 2 compliance monitoring sites through consultation with the executive director in accordance with this subparagraph.

(i) Systems required to sample at the same number of sites under Stage 1 and Stage 2, can use the Stage 1 sites for Stage 2 compliance monitoring.

(ii) Systems required to sample at more sites under Stage 2 than Stage 1 must identify Stage 2 sites in addition to the existing Stage 1 sites. Systems must identify additional sites representing areas of the distribution system with potentially high TTHM or HAA5 levels and provide the rationale for identifying these locations as having high levels of TTHM or HAA5. The required number of compliance monitoring locations must be identified.

(iii) Systems required to sample at fewer sites under Stage 2 than Stage 1 must identify which locations will be used for Stage 2. Stage 2 sites will be selected by alternating selection of Stage 1 locations representing the highest TTHM levels and highest HAA5 levels until the required number of compliance monitoring locations have been identified.

(C) The protocol given in Title 40 Code of Federal Regulations (40 CFR) §141.605(c) for selecting Stage 2 sample sites is hereby adopted by reference.

(2) Routine sampling frequency and number of sample sites are given in the following table, titled "Routine Stage 2 Monitoring Frequency and Number of Sites." Systems must take all routine compliance TTHM and HAA5 samples during normal operating conditions.
Figure: 30 TAC §290.115(c)(2)

(3) Monitoring may be reduced when the LRAA is less than or equal to 0.040 mg/L for TTHM and less than or equal to 0.030 mg/L for HAA5 at all Stage 2 compliance monitoring locations. The Stage 2 reduced sampling frequency and number of sample sites are given in the following table, titled "Reduced Stage 2 Monitoring Frequency and Number of Sites."
Figure: 30 TAC §290.115(c)(3)

(A) Only data collected under the provisions of §290.113 of this title (relating to Stage 1 Disinfection By-products (TTHM and HAA5)) and under this section may be used to qualify for reduced monitoring.

(B) In order to qualify for reduced monitoring, a system must meet the applicable conditions of this subparagraph.

(i) Systems with annual or less frequent routine monitoring qualify to remain on reduced monitoring as long as each TTHM sample is less than or equal to 0.060 mg/L and each HAA5 sample is less than or equal to 0.045 mg/L.

(ii) Systems on quarterly reduced monitoring qualify to remain on reduced monitoring as long as the TTHM LRAA is less than or equal to 0.040 mg/L and the HAA5 LRAA is less than or equal to 0.030 mg/L at each monitoring location.

(iii) To qualify for reduced monitoring, the source water annual average TOC level, before any treatment, must be less than or equal to 4.0 mg/L at each treatment plant treating surface water or groundwater under the direct influence of surface water, based on monitoring conducted under §290.112 of this title (relating to Total Organic Carbon (TOC)).

(C) Systems will be returned to routine monitoring:

(i) if the LRAA at any monitoring location exceeds either 0.040 mg/L for TTHM or 0.030 mg/L for HAA5 based on quarterly monitoring, or

(ii) if the annual (or triennial) sample at any location exceeds either 0.060 mg/L for TTHM or 0.045 mg/L for HAA5, or

(iii) if the source water annual average TOC level, before any treatment, exceeds 4.0 mg/L at any treatment plant treating surface water or groundwater under the direct influence of surface water.

(D) The executive director may return a system on reduced monitoring to routine monitoring at any time.

(E) A system that is on reduced Stage 1 monitoring in accordance with §290.113(c)(4) of this title that has monitoring locations for Stage 2 different from those under Stage 1 must initiate routine monitoring in accordance with subsection (c)(2) of this section on the schedule given in subsection (a) of this section.

(F) A system that is on reduced monitoring in accordance with §290.113(c)(4) of this title may remain on reduced monitoring after the dates identified in subsection (a)(2) of this section only if the system:

(i) received a very small system (VSS) Initial Distribution System Evaluation (IDSE) waiver under subsection (c)(5)(A) of

this section or received a 40/30 IDSE waiver under subsection (c)(5)(B) of this section, and

(ii) meets the reduced monitoring criteria in (c)(3)(B), and

(iii) is approved to use the same monitoring locations under Stage 1 and Stage 2.

(G) The executive director may choose to perform calculations and determine whether the system is eligible for reduced monitoring in lieu of having the system report that information.

(4) The executive director may increase monitoring in accordance with this paragraph.

(A) A system required to routinely monitor at a particular location annually or less frequently than annually under subsection (c)(2) of this section must increase monitoring to quarterly dual sample sets (every 90 days) at all locations if any TTHM compliance sample is greater than 0.080 mg/L or if any HAA5 compliance sample is greater than 0.060 mg/L at any location.

(B) The executive director may return a system on increased quarterly monitoring to routine monitoring after at least four consecutive quarters for which the LRAA for every monitoring location is less than or equal to 0.060 mg/L for TTHM and less than or equal to 0.045 mg/L for HAA5.

(C) A system that is on increased monitoring under §290.113 of this title must remain on increased monitoring until the system qualifies for a return to routine monitoring under subsection (c)(4)(B) of this section. The increased monitoring schedule must be conducted at the Stage 2 monitoring locations approved under subsection (c)(1) of this section, beginning on the date identified in subsection (a)(2) of this section.

(5) All community systems and nontransient noncommunity systems that serve at least 10,000 people must comply with these Initial Distribution System Evaluation (IDSE) requirements.

(A) The executive director may grant a VSS IDSE monitoring waiver to systems that serve fewer than 500 people. Systems that receive a VSS IDSE monitoring waiver are not required to do IDSE monitoring. Systems must be compliant with all of the Stage 1 monitoring requirements of §290.113 of this title to be eligible for a VSS IDSE waiver.

(B) The executive director may grant a 40/30 IDSE monitoring waiver to IDSE monitoring to systems with compliance samples for TTHM less than 0.040 mg/L and compliance samples for HAA5 less than 0.030 mg/L Systems that receive a 40/30 IDSE monitoring waiver are not required to do IDSE monitoring. Systems must be compliant with all of the Stage 1 monitoring requirements of §290.113 of this title to be eligible for a 40/30 IDSE waiver. The timing of samples that all need to be less than 0.040 mg/L and 0.030 mg/L respectively for TTHM and HAA5 are given in the following table, titled "Timing of Stage 1 Samples Evaluated for 40/30 Waiver."
Figure: 30 TAC §290.115(c)(5)(B)

(i) To qualify for a 40/30 IDSE waiver a system must certify to the executive director that every individual compliance sample taken under §290.113 of this title were less than 0.040 mg/L for TTHM and less than 0.030 mg/L for HAA5, and must have not had any TTHM or HAA5 monitoring violations during the period specified in subsection (a) of this section.

(ii) To qualify for a 40/30 IDSE waiver, a system must submit compliance monitoring results, distribution system schematics, and recommended Stage 2 compliance monitoring locations to the executive director upon request. The executive director may require a system that fails to submit the requested information to perform IDSE sampling.

(iii) The executive director may still require a system that meets the 40/30 IDSE waiver requirements to do IDSE sampling under subparagraph (C) of this paragraph.

(C) Systems that must perform IDSE sampling must submit any needed documentation for waivers, produce an IDSE Plan, do IDSE sampling, and report the IDSE results to the executive director on the schedule in the following table titled "IDSE Schedule."
Figure: 30 TAC §290.115(c)(5)(C)

(i) The IDSE plan has required elements.

(I) The IDSE plan must include a schematic of the distribution system (including distribution system entry points and their sources, and storage facilities), with notes indicating locations and dates of all projected standard monitoring, and also Stage 1 compliance monitoring under §290.113 of this title.

(II) The IDSE plan must include justification of IDSE monitoring location selection and a summary of data used to justify IDSE monitoring location selection.

(ii) Systems must do required IDSE sampling in accordance with this clause.

(I) Systems must monitor at the number and type of sites indicated in the following table titled "Number and Type of IDSE Sample Sites:"
Figure: 30 TAC §290.115(c)(5)(C)(ii)(I)

(II) Systems must collect dual sample sets at each monitoring location. One sample in the dual sample set must be analyzed for TTHM. The other sample in the dual sample set must be analyzed for HAA5.

(III) IDSE sample locations must be different than the existing Stage 1 monitoring locations established under §290.113 of this title.

(IV) IDSE sample locations must be distributed throughout the distribution system.

(V) Systems must monitor at the frequency indicated in the following table titled "Frequency of IDSE Monitoring:"
Figure: 30 TAC §290.115(c)(5)(C)(ii)(V)

(VI) The IDSE monitoring frequency and locations may not be reduced.

(iii) The IDSE report must comply with the elements in this clause.

(I) The IDSE report must include all TTHM and HAA5 analytical results from Stage 1 compliance monitoring under §290.113 of this title and all IDSE sample results and locational running annual averages presented in a tabular or spreadsheet format acceptable as described in TCEQ regulatory guidance number 384: "How to Develop a Monitoring Plan for a Public Water System."

(II) If changed from the IDSE plan submitted under clause (ii) of this subparagraph, the IDSE report must also include an updated distribution system map, documentation verifying the population served, and an updated list of sources including their water type.

(III) The IDSE report must include an explanation of any deviations from the approved IDSE plan.

(IV) The IDSE report must recommend and justify Stage 2 compliance monitoring locations consistent with subsec-

tion (c)(1) of this section. The recommended Stage 2 compliance monitoring locations must be listed in a Stage 2 sample plan as part of the system's monitoring plan.

(iv) The executive director may approve a system specific study that meets the requirements in 40 CFR §141.602 to comply with IDSE sampling requirements. The commission hereby adopts the requirements of 40 CFR §141.602 by reference.

(d) Analytical requirements for TTHM and HAA5. Analytical procedures required by this section shall be performed in accordance with §290.119 of this title (relating to Analytical Procedures). Testing for TTHM and HAA5 shall be performed at a laboratory certified by the executive director.

(e) Reporting requirements for TTHM and HAA5. Public water systems must submit reports related to TTHM and HAA5 to the executive director. Reports must be mailed to the Water Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

(1) Upon the request of the executive director, the owner or operator of a public water system must provide the executive director with a copy of the results of any test, measurement, or analysis required by this subsection. The copies must be submitted within ten days of the request or within ten days of their receipt by the public water system, whichever is later.

(A) The owner or operator of a public water system is responsible for reporting the following information for each monitoring location to the executive director within ten days of the end of any quarter in which monitoring is required:

(i) number of samples taken during the last quarter,

(ii) date and results of each sample taken during the last quarter,

(iii) arithmetic average of quarterly results for the last four quarters for each monitoring location (LRAA), beginning at the end of the fourth calendar quarter that follows the compliance date and at the end of each subsequent quarter,

(iv) whether the MCL was violated at any monitoring location, and

(v) any OELs that were exceeded during the quarter and, if so, the location and date, and the calculated TTHM and HAA5 levels.

(B) If the LRAA based on fewer than four quarters would cause the MCL to be exceeded regardless of the monitoring results of subsequent quarters, the system must report a potential MCL violation as part of the first report due following the compliance date or anytime thereafter that this determination is made.

(C) A system that treats surface water or groundwater under the direct influence of surface water that seeks to qualify for or remain on reduced TTHM and HAA5 monitoring must measure and report TOC monthly in accordance with §290.112 of this title (relating to Total Organic Carbon) and distribution system disinfection levels in accordance with §290.110 of this title (relating to Disinfection).

(2) A system that exceeds an OEL described in subsection (b)(2) of this section must conduct an operation evaluation and submit a written operation evaluation report that meets the requirements of this paragraph.

(A) The operation evaluation report must be submitted to the executive director no later than 90 days after being notified of the analytical result that causes the exceedance of the OEL.

(B) The operation evaluation report must document an examination of system treatment and distribution operation practices that may contribute to TTHM and HAA5 formation, including:

(i) storage tank operations;

(ii) excess storage capacity;

(iii) distribution system flushing;

(iv) changes in sources or source water quality;

(v) treatment changes or problems; and

(vi) what steps could be considered to minimize future exceedances.

(C) If the cause of the OEL exceedance is identifiable the scope of the report may be limited with the approval of the executive director. A request to limit the scope of the evaluation does not extend the schedule in paragraph (2)(A) of this subsection for submitting the written report. The executive director's approval to limit the scope of the operation evaluation report must be in writing. The system must keep a copy of the executive director's approval with the completed operation evaluation report.

(D) The operation evaluation report must be submitted and approved in writing.

(f) Compliance determination for TTHM and HAA5. Compliance with the provisions of this section shall be determined as follows.

(1) A public water system violates the MCL for TTHM if any locational running annual average for TTHM exceeds an MCL specified in subsection (b)(1)(A) of this section. A public water system violates the MCL for HAA5 if any locational running annual average for HAA5 exceeds the MCL specified in subsection (b)(1)(B) of this section.

(A) Compliance with the MCLs for TTHM and HAA5 shall be based on the LRAA of all samples collected during four consecutive quarters of monitoring. If a single quarterly sample would cause an LRAA exceedance regardless of the results of subsequent quarters, compliance may be based on fewer than four quarters of data. Should a system fail to collect all required samples, compliance will be based on the available data. All samples collected at the sampling sites designated in the public water system's monitoring plan shall be used to compute the quarterly and annual averages unless the analytical results are invalidated by the executive director for technical reasons.

(B) Stage 2 MCL compliance determination with LRAAs will start after Stage 2 samples are collected.

(i) For systems required to conduct routine quarterly monitoring, compliance calculations will be made starting at the end of the fourth calendar quarter that follows the compliance date in subsection (a)(2) of this section and at the end of each subsequent quarter.

(ii) For systems on routine quarterly monitoring, where the LRAA based on fewer than four quarters would exceed the MCL regardless of the monitoring results of subsequent quarters, compliance will be calculated beginning with the first sample that causes that exceedance.

(iii) For systems that are required to monitor less frequently than quarterly, compliance shall be calculated beginning with the first compliance sample taken after the compliance date.

(iv) For systems monitoring annually or triennially that start monitoring quarterly in the quarter following an LRAA exceedance, compliance shall be calculated based on the results of quarterly samples.

(C) If a public water system's failure to monitor makes it impossible to determine compliance with the MCL for TTHM or HAA5, the system commits an MCL violation for the entire period covered by the annual average.

(D) The executive director may choose to perform calculations and determine MCL exceedances in lieu of having the system report that information.

(E) IDSE results will not be used for the purpose of determining compliance with MCLs.

(2) A system that fails to monitor in accordance with this section commits a monitoring violation. Failure to monitor will be treated as a violation for the entire period covered by the annual average. A system is in violation of the monitoring requirements for each quarter that a monitoring result would be used in calculating an LRAA if the system fails to monitor.

(3) A system that fails to perform a required operation evaluation under subsection (e)(2) of this section commits a monitoring violation.

(4) A public water system that fails to report the results of the monitoring tests required by subsection (e) of this section commits a reporting violation.

(5) A system that fails to submit an operation evaluation report as required under subsection (e)(2) of this section commits a reporting violation.

(6) A system that fails to perform a required public notification commits a public notification violation.

(g) Public Notification Requirements for TTHM and HAA5. A public water system that violates the treatment technique requirements of this section must notify the executive director and the system's customers.

(1) A public water system that commits an MCL violation described in subsection (f)(1) of this section shall report to the executive director and the water system customers in accordance with the requirements of §290.122(b) of this title (relating to Public Notification).

(2) A public water system which fails to conduct the monitoring required by subsection (c) of this section must notify its customers of the violation in accordance with the requirements of §290.122(c) of this title.

(3) Any IDSE compliance documents required under subsection (c)(5)(C) of this section must be made available to the executive director or the public upon request.

(4) Any operation evaluation report required under subsection (e)(2) of this section must be made available to the executive director or the public upon request.

§290.116. Groundwater Corrective Actions and Treatment Techniques.

(a) Applicability. All groundwater public water systems must comply with the treatment techniques and corrective actions of this section if a raw groundwater source sample was positive for fecal indicators or if the system is not required to conduct raw groundwater source monitoring because it provides at least 4-log treatment of viruses.

(1) A groundwater system must provide written notification to the executive director before December 1, 2009, that it is not required to meet the raw groundwater source monitoring requirements under §290.109(c)(4) of this title (relating to Microbial Contaminants) because it provides at least 4-log treatment of viruses and begin compliance monitoring in accordance with subsection this section. The notification must include engineering, operational, and other information required by the executive director to evaluate the submission. If the system discontinues 4-log treatment of viruses before the first customer for any groundwater source, the system must conduct raw groundwater source sampling as required under §290.109(c)(4) of this title.

(2) A groundwater system that places a groundwater source in service after November 30, 2009, that is not required to meet the raw source monitoring requirements under §290.109(c)(4) of this title because the system provides at least 4-log treatment of viruses must begin compliance monitoring within 30 days of placing the source in service in accordance with subsection (c) of this section. The system must provide written notification to the executive director that it provides at least 4-log treatment of viruses at or before the first customer. The notification must include engineering, operational, and other information required by the executive director to evaluate the submission. If the system discontinues 4-log treatment of viruses before or at the first customer for a groundwater source, the system must conduct raw groundwater source sampling as required under subsection (c)(4) of this section.

(b) Groundwater corrective action plan. All public water systems using groundwater must submit a corrective action plan and implement corrective action if a raw groundwater source sample was positive for fecal indicators.

(1) If a groundwater source sample was found to be fecal indicator positive, the system must consult with the executive director regarding appropriate corrective action and have an approved corrective action plan in place within 30 days of receiving written notification from a laboratory of the fecal indicator positive source sample collected under subsection (c)(4) of this section.

(2) Within 120 days of receiving written notification from a laboratory of the fecal indicator positive source sample, the system must have completed corrective action or be in compliance with an approved corrective action plan and schedule.

(3) Any changes to the approved corrective action plan or schedule must be approved by the executive director.

(4) The executive director may require interim measures for the protection of public health pending approval of the corrective action plan. The system must comply with these interim measures as well as with any schedules specified by the executive director.

(5) Systems that are required to complete corrective action must implement one or more of the procedures in this paragraph and the details of the implementation must be specified in the approved corrective action plan.

(A) The system may disinfect the groundwater source where the fecal indicator positive source sample was collected following the American Water Works Association (AWWA) standards for well disinfection and start monthly fecal indicator sampling at that source within 30 days after well disinfection. The executive director may discontinue the monthly source sampling requirement if corrective action is sufficient.

(B) The system may eliminate the source that was found to be fecal indicator positive and provide an alternate source if necessary. Eliminated sources must be disconnected from the distribution system.

(C) The system may identify and eliminate the source of fecal contamination followed by well disinfection according to AWWA well disinfection standards and begin monthly fecal indicator sampling within 30 days after well disinfection. The executive director may al-

low the system to discontinue the monthly source sampling requirement after making a determination that corrective action is sufficient.

(D) The system may provide treatment that reliably achieves at least 4-log treatment of viruses using inactivation, removal or an executive director-approved combination of inactivation and removal before the first customer of the groundwater source.

(c) Microbial inactivation requirements. A system that treats groundwater in response to a fecal indicator positive source sample or in lieu of the raw groundwater source monitoring shall meet minimum disinfection requirements demonstrating at least 4-log treatment of viruses before the water is distributed.

(1) Monitoring requirements for chemical disinfectants. Groundwater systems shall monitor the performance of the disinfection facilities to ensure that appropriate disinfectant levels are maintained. All monitoring conducted pursuant to the requirements of this section must be conducted at sites designated in the system's monitoring plan.

(A) Groundwater systems serving a population greater than 3,300 must continuously monitor the residual disinfectant concentration at a location approved by the executive director and must record the lowest residual disinfectant concentration every day the groundwater source serves the public.

(B) Groundwater systems serving a population less than 3,300 must monitor the disinfectant residual in each disinfection zone at least once each day during a time when peak hourly raw water flow rates are occurring.

(C) Disinfection contact time will be based on tracer study data or a theoretical analysis submitted by the system owner or their designated agent and approved by the executive director.

(D) Groundwater treatment plants that fail to demonstrate an appropriate level of treatment must repeat these tests at four-hour or shorter intervals until compliance has been reestablished.

(2) Monitoring requirements for ultraviolet light (UV) disinfection facilities. Public water systems shall monitor the UV intensity as measured by a UV sensor, lamp status, the flow rate through the unit, and other parameters prescribed by the executive director to ensure that the units are operating within validated conditions.

(3) Analytical requirements. All monitoring required by this section must be conducted at a facility approved by the executive director and using methods that conform to the requirements of §290.119 of this title (relating to Analytical Procedures).

(A) The pH analysis must be conducted using a pH meter with a minimum accuracy of plus or minus 0.1 pH units.

(B) The temperature of the water must be measured using a thermometer or thermocouple with a minimum accuracy of plus or minus 0.5 degrees Celsius.

(C) The free chlorine residual must be measured to a minimum accuracy of plus or minus 0.1 mg/L using one of the following methods:

(i) Amperometric titration;

(ii) DPD Ferrous titration;

(iii) a DPD method that uses a colorimeter or spectrophotometer; or

(iv) Springaldizine (FACTS)

(D) The chloramine residual must be measured to a minimum accuracy of plus or minus 0.1 mg/L using one of the following methods:

(i) Amperometric titration;

(ii) DPD Ferrous titration; or

(iii) a DPD method that uses a colorimeter or spectrophotometer.

(E) The chlorine dioxide residual must be measured to a minimum accuracy of plus or minus 0.05 mg/L using one of the following methods:

(i) Amperometric titrator with platinum-platinum electrodes; or

(ii) Lissamine Green B.

(F) The ozone residual must be measured to a minimum accuracy of plus or minus 0.05 mg/L using an indigo method that uses a colorimeter or spectrophotometer.

(d) Reporting requirements. Groundwater systems required to conduct corrective action in response to a fecal indicator positive source sample or in lieu of the raw groundwater source monitoring must report to the executive director in accordance with this subsection.

(1) A groundwater system required to conduct compliance monitoring for chemical disinfectants must submit a Groundwater Treatment Monthly Operating Report (commission Form 20362) for groundwater disinfection facilities monthly. Groundwater systems must submit the first form starting before the month of December 2009, to avoid raw groundwater source monitoring.

(2) A groundwater system must provide written notification to the executive director before December 1, 2009, that it is not required to meet the raw groundwater source monitoring requirements under paragraph §290.109(c)(4) of this title (relating to Microbial Contaminants) because it provides at least 4-log treatment of viruses and begin compliance monitoring in accordance with subsection §290.116(c) of this section. The notification must include engineering, operational, and other information required by the executive director to evaluate the submission.

(3) A groundwater system required to complete corrective action under subsection (b) of this section must notify the executive director within 30 days of completing the corrective action.

(4) If a groundwater system is subject to the triggered source monitoring requirements of §290.109(c)(4)(A) of this title and does not conduct source monitoring, the system must provide written documentation that it was providing 4-log treatment of viruses within 30 days of the positive distribution coliform sample.

(e) Compliance determination. The executive director shall determine compliance for groundwater systems required to conduct corrective action in response to a fecal indicator positive source sample or in lieu of the raw groundwater source monitoring in accordance with this subsection.

(1) A groundwater system is in violation of the treatment technique requirement if it does not complete corrective action in accordance with the executive director-approved corrective action plan or any interim measures required by the executive director.

(2) A groundwater system is in violation of the treatment technique requirement if it is not in compliance with the executive director-approved corrective action plan and schedule.

(3) A groundwater system subject to the requirements of subsection §290.116(c) of this title that fails to maintain at least 4-log treatment of viruses is in violation of the treatment technique requirement if the failure is not corrected within four hours.

(4) A groundwater system that fails to conduct the disinfectant monitoring required under subsection (c) of this section commits a monitoring violation.

(5) A groundwater system that fails to report the results of the disinfectant monitoring required under subsection (c) of this section commits a reporting violation.

(6) A groundwater system that fails to issue a required public notice or certify that the public notice has been performed commits a public notice violation.

(f) Public notification. A groundwater system that commits a treatment technique, monitoring, or reporting violation as identified in this section must notify its customers of the violation in accordance with the requirements of §290.122 of this title (relating to Public Notification).

§290.117. Regulation of Lead and Copper.

(a) General requirements.

(1) - (2) (No change.)

(3) Action levels for lead and copper are 0.015 milligrams per liter (mg/L) [~~mg/L~~] and 1.3 mg/L, respectively. The action levels are exceeded if the concentration of lead and/or copper in more than 10% of the first draw tap water samples collected during any monitoring period is greater that 0.015 mg/L for lead or 1.3 mg/L for copper. If collecting only five samples, the average of the two highest samples shall be used to determine compliance with the action level.

(b) Sample site selection and materials survey [~~Site Selection and Materials Survey~~].

(1) - (3) (No change.)

(c) Tap sampling.

(1) - (7) (No change.)

(8) A new community or nontransient noncommunity water system begins the first six-month initial monitoring period in the year following a new water system's assignment of a Public Water System identification number.
[~~Figure: 30 TAC §290.117(c)(8)~~]

(d) Computing 90th percentile lead and copper levels [~~Percentile Lead and Copper Levels~~]. Determination of 90th percentile levels shall be obtained by ranking the results of lead and copper samples collected during a monitoring period in ascending order (lowest concentration equal sample Number 1; highest concentration equal sample Numbers 10, 20, 30, 40, 50, etc.), up to the total number of samples collected. The number of samples collected during the monitoring period shall be multiplied by 0.9 and the concentration of lead and copper in the numbered sample yielded by this calculation is the 90th percentile sample contaminant level. The system is in compliance with the lead and/or copper action levels if the 90th percentile sample contaminant level is equal to or less than the action levels specified in subsection (a)(3) of this section. For water systems serving fewer than 101 people, the 90th percentile level is computed by taking the average of the highest two sample results.

(e) - (g) (No change.)

(h) Monitoring requirements for water quality parameters (WQPs) and source water.

(1) Water quality parameters.

(A) - (C) (No change.)

(D) Large water systems must conduct WQP monitoring at all entry points and at the number of distribution sites specified in subsection (h)(1)(D) [~~(c)(8)~~] of this section [~~title~~], Table Number 2. Small and medium water systems that are required to conduct WQP monitoring must monitor at all entry points and at the required number of distribution sites as shown in subsection (h)(1)(D) [~~(c)(8)~~] of this section, Table Number 2.
Figure: 30 TAC §290.117(h)(1)(D)
[~~Figure: 30 TAC §290.117(h)(1)(D)~~]

(E) (No change.)

(F) After corrosion control treatment is installed, water quality parameters shall be measured at the initial number of distribution sites as indicated in subsection (h)(1)(D) [~~(c)(8)~~] of this section, Table Number 2 quarterly and also at entry points biweekly (every two weeks).

(G) (No change.)

(H) Any water system that maintains the range of values for WQP's reflecting optimum corrosion control as approved by the executive director for one-year may collect quarterly distribution samples at the reduced number of distribution sites indicated in subsection (h)(1)(D) [~~(c)(8)~~] of this section, Table Number 2. WQP samples shall continue to be measured at entry points on a biweekly basis and results submitted to the executive director.

(I) - (L) (No change.)

(M) A water system conducting WQP monitoring may limit entry point sampling to each official entry point as designated in the database for Safe Drinking Water Act (SDWA) [~~SDWA~~] compliance sampling. The water system must monitor WQPs at all entry points regardless of whether corrosion control treatment is required at all entry points or not. The water system must inform the executive director of the identity of treated and non-treated entry points and their seasonal use, if any, and demonstrate that the WQPs represent water quality and treatment conditions throughout the system.

(N) (No change.)

(O) Large water systems shall monitor applicable WQPs every calendar quarter beginning after installation of corrosion control treatment approved by the executive director. Small and medium water systems shall monitor WQPs every calendar quarter while the system is in exceedance status. The executive director will issue a reporting waiver to small and medium systems for WQPs after the system completes two follow-up [~~follow up~~] rounds of tap sampling without exceeding either the lead or copper action level. The water system will continue to collect and record certain crucial parameters that will be available for inspection. If a small or medium water system exceeds the lead or copper action level during a reduced tap monitoring round (summer monitoring), the system shall conduct WQP monitoring until the exceedance status is resolved.

(P) - (Q) (No change.)

(2) Entry point water sampling.

(A) - (C) (No change.)

(D) The monitoring frequency for lead and copper in source water, after the executive director determines that source water treatment is not required, or after the executive director has specified the maximum permissible source water levels for lead and copper, shall be in accordance with inorganic chemical monitoring practices and procedures as stated in §290.106 of this title [~~(relating to Inorganic Contaminants)~~].

(E) - (F) (No change.)

(i) Public education requirements.

(1) A water system that exceeds the lead action level at the 90th percentile tap sample shall deliver to the public the public education materials listed in 40 CFR §141.85(a), and according to the requirements in paragraph (2) of this subsection shall provide copies of the public education materials to the executive director within ten days after the delivery of the materials to the public.

(2) A community water system shall, within 60 days of notification by the commission:

(A) - (B) (No change.)

(C) deliver pamphlets or brochures that contain the public education materials as specified in 40 CFR §141.85(a)(2) and (4) to city or county health departments, to public schools or local school boards, Women[,] Infants and Children (WIC) or Head Start Programs when available, public and private hospitals or clinics, pediatricians, family planning clinics, and local welfare agencies, within their service area;

(D) - (H) (No change.)

(3) - (5) (No change.)

(j) Corrosion control.

(1) All applicable water systems shall install and operate optimal corrosion control treatment, which means the corrosion control treatment that minimizes lead and copper concentrations at users' taps while insuring that the treatment does not cause the system to violate any other drinking water standard. All large water systems that exceeded 0.005 mg/L lead at the 90th percentile during initial monitoring or any system that exceeded the lead or copper action level at the 90th percentile during any tap monitoring sampling round and that has installed corrosion control treatment with approved WQP ranges, must operate and maintain optimal corrosion control within those ranges. Compliance periods for this paragraph are two six-month periods, January 1 to June 30, and July 1 to December 31. A water system is out of compliance with this subsection for a six-month period if the water system has WQP excursions for any approved range for more than nine days. An excursion occurs whenever the daily value for one or more WQPs [~~WQPs's~~] measured at a sampling location is below the minimum value or outside the range approved by the executive director. The executive director has the discretion to delete results of obvious sampling errors from this calculation. Daily values are calculated as follows.

(A) - (C) (No change.)

(2) - (5) (No change.)

(k) - (m) (No change.)

§290.118. Secondary Constituent Levels.

(a) - (c) (No change.)

(d) Analytical requirements for secondary constituents. All analyses for determining compliance with the provisions of this subsection shall be conducted in accordance with §290.119 of this title (relating to Analytical Procedures) at a facility certified by the executive director [~~Texas Department of Health Bureau of Laboratories~~].

(e) - (g) (No change.)

§290.119. Analytical Procedures.

(a) (No change.)

(b) Acceptable analytical methods. Methods of analysis shall be as specified in 40 Code of Federal Regulations (CFR) or by any alternative analytical technique as specified by the executive director and approved by the Administrator under 40 CFR §141.27. Copies are available for review in the Water Supply Division, MC 155, Texas Commission on Environmental Quality, [~~Texas Natural Resource Conservation Commission,~~] P.O. Box 13087, Austin, Texas 78711-3087. The following National Primary Drinking Water Regulations set forth in Title 40 CFR are adopted by reference:

(1) - (9) (No change.)

§290.121. Monitoring Plans.

(a) (No change.)

(b) Monitoring plan requirements. The monitoring plan shall identify all sampling locations, describe the sampling frequency, and specify the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements of this subchapter.

(1) The monitoring plan shall include information on the location of all required sampling points in the system. Required sampling locations for regulated chemicals are provided in §290.106 of this title (relating to Inorganic Contaminants), §290.107 of this title (relating to Organic Contaminants), §290.108 of this title (relating to Radionuclides Other than Radon), §290.109 of this title (relating to Microbial Contaminants), §290.110 of this title (relating to Disinfectant Residuals), §290.111 of this title (relating to Surface Water Treatment [~~Turbidity~~]), §290.112 of this title (relating to Total Organic Carbon (TOC)), §290.113 of this title (relating to Stage 1 Disinfection By-products (TTHM and HAA5)), §290.114 of this title (relating to Other Disinfection By-products (Chlorite and Bromate)), §290.115 of this title (relating to Stage 2 Disinfection By-products (TTHM and HAA5)), §290.116 of this title (Relating to Groundwater Corrective Actions and Treatment Techniques), §290.117 of this title (relating to Regulation of Lead and Copper), and §290.118 of this title (relating to Secondary Constituent Levels).

(A) - (D) (No change.)

(2) - (5) (No change.)

(6) The monitoring plan shall include any groundwater source water monitoring plan developed under §290.109(c)(4) of this title (relating to Microbial Contaminants) to specify well sampling for triggered coliform monitoring.

(7) The monitoring plan shall include any initial distribution system evaluation compliance documentation required by §290.115(c)(5) of this title (relating to Stage 2 Disinfection By-products (TTHM and HAA5)).

(8) The monitoring plan shall include any raw surface water monitoring plan required under §290.111 of this title (relating to Surface Water Treatment).

(c) Reporting requirements. All public water systems shall maintain a copy of the current monitoring plan at each treatment plant and at a central location. The water system must update the monitoring plan when the water system's sampling requirements or protocols change.

(1) Public water systems that treat surface water or groundwater under the direct influence of surface water [~~and serve at least 10,000 people~~] must submit a copy of the monitoring plan to the executive director upon development and revision. [~~by January 1, 2001.~~]

[~~(2) Public water systems that treat surface water or groundwater under the direct influence of surface water and serve fewer than 10,000 must submit a copy of the monitoring plan to the executive director by January 1, 2003.~~]

(2) [~~(3)~~] Public water systems that treat groundwater that is not under the direct influence of surface water or purchase treated

water from a wholesaler must develop a monitoring plan [~~by January 1, 2004,~~] and submit a copy of the monitoring plan to the executive director upon request.

(3) [~~(4)~~] All water systems must provide the executive director with any revisions to the plan upon request.

(d) Compliance determination. Compliance with the requirements of this section shall be determined using the following criteria.

(1) A public water system that fails to submit an administratively complete monitoring plan by the required date or fails to submit updates to a plan when required [~~upon request~~] commits a reporting violation.

(2) (No change.)

(e) (No change.).

§290.122. Public Notification.

(a) Public notification requirements for acute violations. The owner or operator of a public water system must notify persons served by their system of any maximum contaminant limit (MCL), maximum residual disinfectant level (MRDL), or treatment technique violation that poses an acute threat to public health. Each notice required by this section must meet the requirements of subsection (d) of this section.

(1) Violations that pose an acute threat to public health include:

(A) (No change.)

(B) an acute turbidity issue at a treatment plant that is treating surface water or groundwater under the direct influence of surface water, specifically: [~~a treated water turbidity level above 5.0 Nephelometric Turbidity Unit in the combined filter effluent of a treatment plant that is treating surface water or groundwater under the direct influence of surface water;~~]

(i) a combined filter effluent turbidity level above 5.0 nephelometric turbidity units (NTU);

(ii) a combined filter effluent turbidity level above 1.0 NTU at a treatment plant using membrane filters; or

(iii) a combined filter effluent turbidity level above 1.0 NTU at a plant using other than membrane filters at the discretion of the executive director after consultation with the system; or

(iv) failure of a system with treatment other than membrane filters to consult with the executive director within 24 hours after a combined filter effluent ready of 1.0 NTU;

(C) - (D) (No change.)

(E) occurrence of a waterborne disease outbreak; [~~and~~]

(F) Detection of *E. coli* or other fecal indicators in source water samples as specified in §290.109(b)(2) of this title (relating to Microbial Contaminants); and

(G) [~~(F)~~] other violations deemed by the executive director to pose an acute risk to human health.

(2) - (5) (No change.)

(b) Public notification requirements for other MCL, MRDL, or treatment technique violations and for variance and exemption violations. The owner or operator of a public water system must notify persons served by their system of any MCL, MRDL, or treatment technique violation other than those described in subsection (a)(1) of this section and of any violation involving a variance or exemption requirement. Each notice required by this section must meet the requirements of subsection (d) of this section.

(1) Violations that require notification under this subsection include:

(A) (No change.)

(B) failure to comply with the requirements of any variance or exemption granted under §290.102(d) of this title (relating to General Applicability); [~~or~~]

(C) failure for a groundwater system to take corrective action or failure to maintain at least 4-log treatment of viruses (using inactivation, removal, or a combination of 4-log virus inactivation and removal approved by the executive director) before or at the first customer under §290.116 of this title; or

(D) failure to perform any 3 months of raw surface water monitoring as required by §290.111(b) of this title; or

(E) [~~(C)~~] other violations deemed appropriate by the executive director that pose a non-acute risk to human health.

(2) - (4) (No change.)

(c) (No change.)

(d) Each public notice must conform to the following general requirements.

(1) - (2) (No change.)

(3) For notices required under subsections (a), (b), or (c)(1)(A) of this section, the notice must describe potential adverse health effects.

(A) - (B) (No change.)

(C) For failure to perform any 3 months of raw surface water monitoring as required by §290.111(b) of this title, the notice must contain the mandatory federal contaminant specific language contained in 40 CFR §141.211(d)(1), in addition to any language required by the executive director.

(D) [~~(C)~~] The notice must describe the population at risk, especially subpopulations particularly vulnerable if exposed to the given contaminant.

(4) - (9) (No change.)

(e) (No change.)

(f) Proof of public notification. A copy of any public notice required under this section must be submitted to the executive director within ten days of its distribution as proof of public notification. The copies must be mailed to the [~~Texas Commission on Environmental Quality,~~] Water Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. Each proof of public notification must be accompanied with a signed Certificate of Delivery.

(g) - (h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 27, 2007.

TRD-200703276
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: September 9, 2007
For further information, please call: (512) 239-6087

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30 TAC §290.111

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Water Code (TWC) §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; and Texas Health and Safety Code (THSC) §341.031, which allows the commission to adopt rules to implement the federal Safe Drinking Water Act, 42 United States Code §§300f to 300j-26; and THSC §341.0315, which requires public water systems to comply with commission rules adopted to ensure the supply of safe drinking water.

The repeal implements TWC §5.102, §5.103, §5.105, THSC §341.031, and §341.0315.

§290.111. Turbidity.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
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Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

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SUBCHAPTER H. CONSUMER CONFIDENCE REPORTS

30 TAC §§290.272, 290.273, 290.275

STATUTORY AUTHORITY

These amendments are proposed under Texas Water Code (TWC) §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; and Texas Health and Safety Code (THSC) §341.031, which allows the commission to adopt rules to implement the federal Safe Drinking Water Act, 42 United States Code §§300f to 300j-26;and THSC §341.0315, which requires public water systems to comply with commission rules adopted to ensure the supply of safe drinking water.

The proposed amendments implement TWC §5.102, §5.103, §5.105, THSC §341.031, and §341.0315.

§290.272. Content of the Report.

(a) - (b) (No change.)

(c) Information on detected contaminants.

(1) - (3) (No change.)

(4) For detected regulated contaminants listed under §290.275 of this title, the table(s) must contain:

(A) - (C) (No change.)

(D) for contaminants subject to an MCL, except turbidity and total coliforms, the highest contaminant level used to determine compliance with National Primary Drinking Water Regulations and the range of detected levels.

(i) - (ii) (No change.)

(iii) For the MCLs for trihalomethanes (TTHM) and haloacetic acids (HAA5), systems must include the highest locational running annual average for TTHM and HAA5 and the range of individual sample results for all monitoring locations expressed in the same units as the MCL. If more than one location exceeds the TTHM or HAA5 MCL, the system must include the locational running annual averages for all sampling points that exceed the MCL.

(iv) [~~(iii)~~] When compliance with any MCL is determined on a system-wide basis by calculating a running annual average of all samples at all sampling points, the table(s) must include the average and range of detections expressed in the same units as the MCL.

(v) [~~(iv)~~] When the executive director allows the rounding of results to determine compliance with the MCL, rounding should be done after multiplying the results by the factor listed under §290.275 of this title.

(E) When turbidity is reported under §290.111 of this title (relating to Surface Water Treatment [~~Turbidity~~]), the table(s) must contain the highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in that section for the filtration technology being used. The report should include an explanation of the reasons for measuring turbidity.

(F) - (I) (No change.)

(5) (No change.)

(d) (No change.)

(e) Compliance with NPDWR. In addition to the requirements in subsection (c)(4)(I)(ii) of this section, the report must note any violation that occurred during the year covered by the report of a requirement listed in paragraphs (1) - (8) [~~(7)~~] of this subsection.

(1) - (6) (No change.)

(7) For systems required to conduct initial distribution sampling evaluation (IDSE) sampling in accordance with §290.115(c)(5) of this title (relating to Stage 2 Disinfection By-products (TTHM and HAA5)), the system is required to include individual sample results for the IDSE when determining the range of TTHM and HAA5 results to be reported in the annual consumer confidence report for the calendar year that the IDSE samples were taken.

(8) [~~(7)~~] The report must include a clear and readily understandable explanation of each violation of the terms of a variance, exemption, administrative order, or judicial order and explain any adverse health effects and steps the system has taken to correct the violation.

(f) (No change.)

(g) Additional information.

(1) - (6) (No change.)

(7) Beginning December 1, 2009, any groundwater system that receives notice from a laboratory of a fecal indicator-positive groundwater source sample that is not invalidated by the execu-

tive director under §290.109(d) of this title (relating to Microbial Contaminants) must inform its customers of any fecal indicator-positive groundwater source sample in the next report. The system must continue to inform the public annually until the executive director determines that the fecal contamination in the groundwater source is addressed under §290.116(a) of this title (relating to Groundwater Corrective Actions and Treatment Techniques). Each report must include the following elements:

(A) the source of the fecal contamination (if the source is known) and the dates of the fecal indicator-positive groundwater source samples;

(B) actions taken to address the fecal contamination in the groundwater source as directed by §290.116 of this title and the date of such action;

(C) for each fecal contamination in the groundwater source that has not been addressed under §290.116 of this title, the plan approved by the executive director and schedule for correction, including interim measures, progress to date, and any interim measures completed; and

(D) for a fecal indicator-positive groundwater source sample that is not invalidated by the executive director under §290.109(d) of this title, the potential health effects using the health effects language of §290.275(3) of this title.

(8) Beginning December 1, 2009, any groundwater system that receives notice from the executive director of a significant deficiency must inform its customers of any significant deficiency that is uncorrected at the time of the next report. The system must continue to inform the public annually until the executive director determines that particular significant deficiency is corrected under §290.116 of this title. Each report must include the following elements:

(A) the nature of the particular significant deficiency and the date the significant deficiency was identified by the executive director;

(B) for each significant deficiency, the plan approved by the executive director and schedule for correction, including interim measures, progress to date, and any interim measures completed; and

(C) if corrected before the next report, the nature of the significant deficiency, how the deficiency was corrected, and the date of the corrections.

§290.273. Required Additional Health Information.

(a) (No change.)

(b) A system that detects arsenic levels above 5 micrograms per liter but below the maximum contaminant level (MCL) shall include in its report a short informational statement about arsenic using the following language: "While your drinking water meets EPA's standard for arsenic, it does contain low levels of arsenic. EPA's standard balances the current understanding of arsenic's possible health effects against the costs of removing arsenic from drinking water. EPA continues to research the health effects of low levels of arsenic, which is a mineral known to cause cancer in humans at high concentrations and is linked to other health effects such as skin damage and circulatory problems." [~~Beginning in the report that is due by July 1, 2002, and ending January 22, 2006, a system that detects arsenic above 0.010 milligrams per liter (mg/L) and up to and including 0.05 mg/L must include the arsenic health effects language of §290.275(3) of this title (relating to Appendices A - D), Appendix C, paragraph (10).~~]

(c) - (f) (No change.)

§290.275. Appendices A - D.

The following appendices are integral components of the subchapter.

(1) Appendix A--Converting MCL Compliance Values for Consumer Confidence Reports.
Figure: 30 TAC §290.275(1)
[~~Figure: 30 TAC §290.275(1)~~]

(2) Appendix B--Sources of Regulated Contaminants.
Figure: 30 TAC §290.275(2)
[~~Figure: 30 TAC §290.275(2)~~]

(3) Appendix C--Health Effects Language.
Figure: 30 TAC §290.275(3)
[~~Figure: 30 TAC §290.275(3)~~]

(4) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 25. MEMBERSHIP CREDIT
SUBCHAPTER P. CALCULATION OF FEES AND COSTS

34 TAC §25.302

(Editor's note: In accordance with Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 34 TAC §25.302 are not included in the print version of the Texas Register. The figures are available in the on-line version of the August 10, 2007, issue of the Texas Register.)

The Teacher Retirement System of Texas (TRS or retirement system) proposes amendments to §25.302 relating to the calculation of actuarial cost. The 79th Legislature, Regular Session (2005), enacted statutory amendments to establish new normal age retirement eligibility requirements for individuals who join TRS on or after September 1, 2007. Because of the change in normal age retirement eligibility requirements for such members, the calculation of the actuarial cost of service credit available to be purchased by TRS members will be affected. The current actuarial cost calculation is based on actuarial factors that reflect the eligibility requirements applicable to individuals whose membership begins before September 1, 2007. To establish an appropriate actuarial cost for service credit purchased by members affected by the new eligibility requirements, the tables containing the actuarial factors need to be expanded. The proposed amendments would add new tables for the calculation of actuarial cost for members affected by the new requirements

who choose to purchase service credit that requires payment of actuarial cost calculated according to this section. Currently, actuarial cost calculated according to this section is required for payment of work experience service credit, membership waiting period service credit, and certain out-of-state service credit. The proposed amendments also address the calculation of cost if an affected member is grandfathered for the purpose of using a three-year salary average rather than a five-year salary average. Also, the amendments clarify that a member who terminated TRS membership and then re-joins TRS on or after September 1, 2007, is subject to the new retirement eligibility provisions and, thus, to the actuarial cost calculations applicable to such members. Finally, the amendments also expand the existing factor tables to include factors established for members purchasing additional service credit when they have between one and four years of TRS service credit at the time of purchase. The existing factor tables start at five years of service credit at the time of purchase; however, a member may purchase membership waiting period service credit with less than five years of service credit at the time of purchase. The amendments expand the existing tables to include factors for purchase in such circumstances.

Tony C. Galaviz, TRS Chief Financial Officer, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Galaviz has also determined that for the first five-year period the proposed amendments are in effect there will not be an effect on small or micro-businesses, so no statement under §2006.002 of the Government Code is required. There is no anticipated economic cost to persons who are required to comply with the proposed section because purchase of service credit is voluntary, or, to the extent any economic cost accompanies compliance with the proposed section, the cost is the result of applicable statutory provisions, which require that certain types of service credit be purchased for actuarial cost.

For each year of the first five years that the proposed section would be in effect, Mr. Galaviz and Ronnie Jung, TRS Executive Director, have determined that the public benefit anticipated as a result of enforcing the proposed amendments will be to update the rule to reflect changes in law and to clarify the application of those changes to persons affected.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River, Austin, Texas 78701. To be considered, written comments must be received by TRS within 30 days of the publication of this notice of proposed rulemaking.

Statutory Authority: The amendments are proposed under the following authorities: §825.102, Government Code, which authorizes the Board to adopt rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board; §823.406, Government Code, authorizing the Board to adopt rules for the administration of this statute concerning the purchase of membership waiting period service credit; and §825.105, which requires the Board to adopt rates and tables the Board considers necessary for the retirement system.

Cross-reference to Statute: The proposed amendments affect the following statutes: §822.001, Government Code, which provides that membership in TRS includes all employees of the public school system; §822.003, Government Code, which provides for termination of membership in the retirement system by withdrawal of all of a person's contributions while the person is absent from service; §822.006, Government Code, which provides that a person whose membership in the retirement system has been terminated and who resumes membership must enter the system on the same terms as a person entering service for the first time; §823.004, Government Code, which provides for computation of and payment for service credit; §823.006, Government Code, providing for limits on contributions; §823.401, Government Code, requiring the payment of the actuarial present value, at the time of deposit, of the additional standard retirement annuity benefits that would be attributable to the purchase of out-of-state service credit based on rates and tables recommended by the retirement system's actuary and adopted by the TRS Board; §823.404, Government Code, requiring the payment of the actuarial present value, at the time of deposit, of the additional standard retirement annuity benefits that would be attributable to the conversion of the work experience into service credit based on rates and tables recommended by the actuary and adopted by the TRS Board; §823.406, Government Code, requiring the payment of the actuarial present value, at the time of deposit, of the additional standard retirement annuity benefits that would be attributable to the purchase of membership waiting period service credit, based on rates and tables recommended by the retirement system's actuary and adopted by the TRS Board; §824.202, Government Code, which establishes early and normal age service retirement eligibility requirements; §824.203, Government Code, which provides for the calculation of a standard service retirement annuity using a five-year salary average; §825.410, Government Code, providing for installment payments and an additional fee when the installment method is used; §825.105, Government Code, authorizing the Board to adopt actuarial tables; §825.506, Government Code, providing for the administration of the retirement plan as a qualified plan under federal tax law; and Acts 2005, 79th Leg., ch. 1359 (Senate Bill 1691), §58, which provides for a three-year salary average for grandfathered members.

§25.302. Calculation of Actuarial Cost.

(a) When a member is purchasing TRS service credit for which the law requires that the actuarial cost or actuarial present value be deposited and for which the method in this section is referenced by another section of this title, TRS will calculate the cost using the tables and method described in subsections (b) , (c), (d), and (e) [~~and (c)~~] of this section.

(b) To calculate the actuarial cost, TRS will use the cost factors obtained from the Actuarial Cost Tables furnished by the TRS actuary of record. The factors for individuals whose membership was established before September 1, 2007, are shown in the tables adopted as part of this subsection (b) of this section. The factors for individuals whose membership was established on or after September 1, 2007, are shown in the tables described in subsection (d) of this section. Within each set of tables, the[~~The~~] number of years of service credit to be purchased will determine which specific table will be used. Each of the tables cross-references the member's age in rows with years of credited service (before purchase) in columns. The intersection of the participant's age and service is the cost per $1,000 of salary. The cost factor for a participant with more years of service credit than shown on the table is the same as the factor shown for the highest number of years of service credit on the table for the participant. TRS will calculate the cost to purchase service credit under this section by dividing the salary by 1000 and multiplying the resulting quotient by the appropriate cost factor obtained from the table. The tables set forth the cost, per $1,000 of salary, to purchase from one year to fifteen years of service credit.

The number of years of service credit available for purchase is determined by the laws and rules applicable to the type of service credit to be purchased. For the purpose of calculating the required amount for a member who is grandfathered to use a three-year salary average under §51.12 of this title (relating to Applicability of Certain Laws in Effect before September 1, 2005), the term "salary" is defined as follows:

(1) For the upper region of the table (where the factors appear above the line [~~in italics~~]), salary is the greater of current annual salary or the average of the member's highest years of compensation, with either two or three years of compensation used for the average, depending on whether the member has only two years or has three or more years of service credit at the time of the calculation; or

(2) For the lower region of the table (where the factors appear below the line [~~in bold~~]), salary is the average of the member's highest three years of compensation. A member's highest three years of compensation shall be calculated as if the member were retiring at the time the service credit is purchased. The lower region of the table (where the factors appear below the line [~~in bold~~]) reflects those age and service combinations where the purchase of service credit results in immediate eligibility of the member for unreduced retirement benefits.

Figure: 34 TAC §25.302(b)(2)

(c) For the purpose of calculation for a member who is not grandfathered to use a three-year salary average, the term "salary" shall have the same meaning as in subsection (b) of this section except that a five-year salary average shall be used instead of a three-year salary average. Additionally, the cost shall be 96 percent of the cost as calculated under subsection (b) of this section when a factor in the upper region of the table is used.

(d) For individuals whose membership was established on or after September 1, 2007, the methodology described in subsection (b) of this section shall be used to determine cost, but the retirement system shall use the factors in the tables adopted as part of this subsection (d) of this section. If the member is not grandfathered to use a three-year salary average, the term "salary" shall have the same meaning as in subsection (b) of this section except that a five-year salary average shall be used instead of a three-year salary average.

Figure: 34 TAC §25.302(d)

(e) If an individual established membership on or after September 1, 2007, but is grandfathered to use a three-year salary average, the term "salary" shall have the same meaning as in subsection (b) of this section. The cost for a grandfathered member who established membership on or after September 1, 2007, shall be 1.04 times the cost as calculated under subsection (d) of this section when a factor in the upper region of the table is used.

(f) An individual who first was a member of TRS before September 1, 2007, but who terminated membership through withdrawal of accumulated contributions and then again joined TRS on or after September 1, 2007, is subject to the calculation of cost under subsections (d) and (e) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 27, 2007.

TRD-200703297

Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: September 9, 2007
For further information, please call: (512) 542-6438

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CHAPTER 53. CERTIFICATION BY COMPANIES OFFERING QUALIFIED INVESTMENT PRODUCTS

34 TAC §§53.1, 53.4 - 53.8, 53.12 - 53.16, 53.18, 53.19

The Teacher Retirement System of Texas ("TRS") proposes amended and new rules for the certification of companies offering qualified investment products through what are commonly referred to as "403(b) plans," which educational institutions make available to their employees, and the registration of those products. The 80th Legislature, Regular Session (2007), amended Article 6228a-5, V.T.C.S., to require that companies register products offered on or after January 1, 2008. To implement the statutory amendments, amendments are proposed to the following rules: §53.1, relating to definitions; §53.4, relating to qualifications for certification by companies offering qualified investment products that are annuity contracts; §53.5, relating to qualifications for certification by companies offering qualified investment products other than annuity contracts; §53.6, relating to procedure for certification; §53.7, relating to certification fee; §53.8, relating to list of certified companies; §53.12, relating to company notification of non-compliance; §53.13, relating to revocation of certification; and §53.14, relating to re-certification. In addition, the following new rules are proposed: §53.15, relating to product registration requirement; §53.16, relating to procedure for product registration; §53.18, relating to list of registered products; and §53.19, relating to proceedings to suspend or revoke certification or registration. TRS also proposes new §53.17, relating to product registration fee as published elsewhere in this issue of the *Texas Register*.

With the recent enactment of House Bill 2427 ("HB 2427"), the legislature amended state law relating to TRS's administration of the 403(b) program. Act of May 23, 2007, 80th Legislature, Regular Session, Chapter 1230, §§17 - 25, 2007 Tex. Sess. Law Serv. (Vernon) (to be codified as amendments to Tex. Rev. Civ. Stat. art. 6228a-5, §§5, 6, 7, 8A, 9, 10, 11, and 13). HB 2427 expands TRS responsibilities with regard to the 403(b) program, relating primarily to company certification at this time, to include registration of qualified investment products offered by certified companies on or after January 1, 2008. The legislation also provides for suspension of company certification or product registration and provides that a proceeding to suspend or revoke company certification or product registration is a contested case proceeding. The proposed amendments and proposed new rules implement the expansion of TRS responsibilities and the contested case requirements.

The proposed amendments to §53.1 add definitions for the words "product" and "register" to clarify the meaning of other rules containing those terms.

The proposed amendments to §53.4 add a new subsection (b)(4) to require that in order to certify to its qualifications, a company that offers qualified investment products that are annuity contracts must certify that its products comply with applicable product registration requirements.

The proposed amendments to §53.5 add a new subsection (b)(7) to require that in order to certify to its qualifications, a company that offers qualified investment products other than annuity contracts must certify that its products comply with applicable product registration requirements.

The proposed amendments to §§53.6, 53.7, and 53.8 modify existing rule text and add new provisions as needed to reflect new statutory provisions relating to denial or suspension of certification. Specifically, the word "deny" replaces "reject" to be consistent with the terminology of statutory amendments, and a reference to suspension of certification is added to reflect this new authority. Also, TRS proposes a minor wording change to reflect that a company may withdraw certification voluntarily.

The proposed amendments to §53.12 require a certified company to notify TRS of non-compliance if it offers a product that is required to be registered but is not registered. The proposed amendments also modify existing rule text for the reasons described above with respect to §§53.6, 53.7, and 53.8.

The proposed amendments to §53.13 change the title of the section and rule text to include a reference to "suspension" of a certification, in accordance with statutory amendments that now allow TRS to suspend a certification. The proposed amendments also provide that suspension or revocation of certification results in automatic suspension or revocation of registration of all company products and removal of the products from the TRS list; that upon termination of a suspension, the company and products will be restored to the list; and that a proceeding for suspension or certification is according to §53.19, relating to proceedings to suspend or revoke certification or registration.

The proposed amendments to §53.14 modify existing rule text by replacing the word "reject" with "deny" with respect to re-certification to be consistent with the terminology of statutory amendments. Also, TRS proposes a minor wording change to reflect that a company may withdraw certification voluntarily.

Proposed new §53.15 establishes the applicability of the product registration requirements, including with respect to products that are the subject of a salary reduction agreement entered into before January 1, 2008. In connection with applicability, the proposed rule clarifies treatment of a product that is the subject of a salary reduction agreement entered into before January 1, 2008, but modified on or after January 1, 2008, with respect to the amount of the contribution under the agreement. The proposed new rule also establishes the twice annual open registration periods for product registration; specifically delegates to the TRS executive director or his designee the authority to establish the form and content of the registration application; and provides that only certified companies may register their qualified investment products.

Proposed new §53.16 establishes the procedure for product registration. The proposed rule provides that a company may register only products for which the company has properly certified to offer and requires that to register products, a company must pay the fee established by TRS and submit all required information in the format required, including electronically if so required. The proposed rule also requires a company to submit information regarding all fees that are charged in connection with the registered product and to provide information regarding fees charged by other entities that are deducted from contributions made by salary reduction agreement, as required by TRS. The proposed rule also contains provisions to clarify administrative processes, such as the date on which registration is effective and expires; the process for adding products after initial registration to offer products and updating information between open registration periods; the requirement to correct information in a timely manner; the grounds for denial of registration; processes relating to suspension, withdrawal, revocation, and expiration of registration, including the requirement that the company cease collecting contributions made by salary reduction agreement when the product that is the subject of the agreement is no longer registered; and a process for company notification to TRS when a company product no longer is offered as the subject of new salary reduction agreements.

Proposed new §53.18 provides for the addition and removal of registered products on the TRS Web site list.

Proposed new §53.19 provides for contested case proceedings to suspend or revoke company certification or product registration. Upon an adverse decision by the TRS chief operating officer revoking or suspending registration, certification, or re-certification, a company may appeal to the TRS executive director. Because TRS has extensive contested case rules in Chapter 43 (34 TAC Chapter 43) applicable to appeals relating to pension plan matters, this proposed rule cross-references those rules in order to avoid repeating lengthy procedural rules applicable to an appeal to the TRS executive director. Those rules provide for the docketing of an eligible appeal, referral for a contested case hearing, procedures applicable during the hearing process, the entry of an executive director decision following a hearing and recommendation by an administrative law judge, and the availability of an appeal to the TRS board of trustees.

Tony C. Galaviz, TRS Chief Financial Officer, estimates that, for each year of the first five years that the proposed rules will be in effect, there will be no foreseeable implications relating to cost or revenues of the state or local governments as a result of enforcing or administering the sections. Rather, any measurable impact on the cost or revenues of the state or local governments is the result of the legislative enactment.

For each year of the first five years that the proposed rules will be in effect, Ronnie Jung, TRS Executive Director, has determined that the public benefits expected as a result of the adoption of the proposed rules will be to implement the product registration requirements of the new legislation and make information more centrally accessible on available products and the fees associated with those products. For each year of the first five years that the proposed rules will be in effect, Mr. Galaviz has determined that any probable economic costs to entities or persons required to comply with the proposed rules is the result of the legislative enactment. There will be no effect on local employment because of the proposals, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Any measurable impact on local employment is the result of the legislative enactment. Mr. Galaviz has also determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the proposed rules.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. To be considered, written comments must be received by TRS no later than 30 days after publication of this notice.

Statutory Authority: The amended and new rules are proposed under the following statutes: §6(a) of Article 6228a-5, Vernon's Texas Civil Statutes, which authorizes TRS, after consultation with the Texas Department of Insurance and the State Securities

Board, to adopt rules to administer §§5, 6 7, 8, 8A, 11, 12, and 13 of Article 6228a-5 relating to 403(b) company certification and product registration; and §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system.

Cross-Reference to Statute: The proposed amendments and new rules affect Article 6228a-5, Vernon's Texas Civil Statutes.

§53.1. Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (2) (No change.)

(3) Certified company--A company that meets all certification requirements, that has certified to TRS and been placed on the TRS list of certified companies, and whose certification has not expired or been withdrawn, denied, [~~rejected~~] or revoked.

(4) - (9) (No change.)

(10) Product--For the purpose of registration under this chapter, an annuity contract or custodial account, as defined under §403(b)(1) and §403(b)(7) of the Internal Revenue Code of 1986, offered by a company that meets certification requirements and has certified to TRS in accordance with this chapter.

(11) [~~(10)~~] Qualified investment product--An annuity or investment that:

(A) meets the requirements of Section 403(b), Internal Revenue Code of 1986, and its subsequent amendments;

(B) complies with applicable federal insurance and securities laws and regulations; and

(C) complies with applicable state insurance and securities laws and rules.

(12) Register--To submit all required information to the retirement system about products to be offered and meet all required qualifications for registration, as indicated by retirement system acceptance of a company's application to register to offer products and inclusion of the company's individual products on the system's Web site.

(13) [~~(11)~~] Representative--A person who sells or offers for sale an eligible qualified investment product on behalf of a certified company and who is licensed or registered if so required by law.

(14) [~~(12)~~] Retirement system or TRS--The Teacher Retirement System of Texas.

(15) [~~(13)~~] Salary reduction agreement--An agreement between an educational institution and an employee to reduce the employee's salary for the purpose of making direct contributions to or purchases of a qualified investment product.

(16) [~~(14)~~] Specialized department--One or more employees of a certified company or a company affiliated with the certified company dedicated to service of qualified investment products. If the certified company is authorized by the Texas Department of Insurance to issue annuity contracts in the State of Texas, the affiliated company must be part of an Insurance Holding Company system as defined in Article 21.49-1, Insurance Code.

§53.4. Qualifications for Certification by Companies Offering Qualified Investment Products that are Annuity Contracts.

(a) (No change.)

(b) A company may certify to TRS under this section if the company:

(1) (No change.)

(2) does not assess fees, costs, or penalties in an annuity contract that exceed the maximum amounts established by this chapter; [~~and,~~]

(3) complies with the following standards:

(A) - (E) (No change.)

(F) the company has at least five years' experience in qualified investment products and has a specialized department dedicated to the service of qualified investment products. If a company is part of an Insurance Holding Company System as defined in Article 21.49-1, §2(i), Insurance Code, and an affiliated company has met the five years experience requirement of this section, the company is deemed to have the same experience of its affiliate for purposes of this section; and,[~~.~~]

(4) the company's products comply with the registration requirements of Article 6228a-5, Texas Civil Statutes, and this chapter, as applicable.

§53.5. Qualifications for Certification by Companies Offering Qualified Investment Products Other than Annuity Contracts.

(a) (No change.)

(b) A company is eligible to certify if:

(1) - (6) (No change.)

(7) The company's products comply with the registration requirements of Article 6228a-5, Texas Civil Statutes, and this chapter, as applicable.

§53.6. Procedure for Certification.

(a) - (b) (No change.)

(c) As part of its certification to TRS, a company shall affirm that each of its representatives is properly licensed and qualified, by training and continuing education, to sell and service the company's eligible qualified investments and that the company will demonstrate this annually to TRS, as required by Article 6228a-5, Texas Civil Statutes, [~~Article 6228a-5,~~] §12.

(d) - (g) (No change.)

(h) TRS may deny [~~reject~~] a company's certification if the company does not provide all required information, if the information provided indicates the company does not meet the requirements for certification, or if TRS receives notification of a violation regarding the company or the company's product from either the Texas Department of Insurance, the State Securities Board, or the company.

(i) Denial [~~Rejection~~] of certification is final but a company may re-certify if it subsequently submits information or corrections that show it meets the requirements for certification. Additional or corrective information filed within 30 business days following a denial [~~rejection~~] of certification shall not require payment of an additional certification fee.

(j) Certification remains in effect in accordance with the provisions of this section unless revoked or suspended by TRS or withdrawn by the company through written notice to TRS.

§53.7. Certification Fee.

(a) - (c) (No change.)

(d) If TRS denies [~~rejects~~] certification by a company, TRS shall retain the amount of the certification fee sufficient to reimburse TRS for its administrative costs associated with review of the certification. TRS may hold the entire certification fee for at least thirty

business days after denial [~~rejection~~] in order to determine whether the company will pursue certification.

(e) No portion of a certification fee is refundable if TRS revokes or suspends a certification or if a company withdraws its certification after it has been accepted by TRS.

§53.8. List of Certified Companies.

(a) - (b) (No change.)

(c) TRS shall remove a company from the list upon suspension, revocation, [~~or~~] expiration, or withdrawal of the company's certification.

(d) (No change.)

§53.12. Company Notification of Non-compliance.

(a) No later than thirty calendar days after the relevant triggering event, a certified company shall notify TRS in writing:

(1) if, at any time, the company is not in compliance with the requirements and standards for certification, including as a result of a merger or change in ownership; [~~or,~~]

(2) if an investment product that the company offers to educational institution employees is the subject of a salary reduction agreement and the investment product is not a qualified investment product; or,[~~.~~]

(3) if, after December 31, 2007, a company offers a product that is required to be registered with TRS but that is not registered.

(b) (No change.)

(c) TRS may deny, suspend, [~~reject~~] or revoke the certification of a company based on notification of non-compliance with certification requirements or based on non-qualified investment products that are the subject of salary reduction agreements.

§53.13. Suspension or Revocation of Certification.

(a) TRS may suspend or revoke a company's certification if the company no longer meets certification requirements or if TRS receives notification of a violation regarding the company or the company's product as provided in Texas Civil Statutes, Article 6228a-5, §6(f).

(b) Upon suspension or revocation of certification, TRS shall remove the name of the company from the list of certified companies maintained by TRS and shall also remove all registered products of the company from the list maintained on the TRS Web site.

(c) Upon termination of a suspension, TRS shall restore the name of the company and its registered products to the lists maintained by TRS, if certification and registration have not terminated by withdrawal, revocation, or expiration. [~~Revocation of certification is final but a company may re-certify if it meets the requirements to do so.~~]

(d) A proceeding for suspension or revocation of certification shall be pursuant to §53.19 of this title (relating to Proceedings to Suspend or Revoke Certification or Registration).

(e) Suspension or revocation of certification automatically suspends or revokes registration of all company products.

§53.14. Re-certification.

(a) A company may re-certify to TRS following expiration, denial, withdrawal [~~rejection~~], or revocation of its certification.

(b) (No change.)

(c) To re-certify following denial [~~rejection~~] or revocation of certification, a company must specifically demonstrate that the grounds for denial [~~rejection~~] or revocation have been remedied.

(d) (No change.)

§53.15. Product Registration Requirement.

(a) A company required to register its qualified investment products under art. 6228a-5, V.T.C.S., shall submit an application to register products and a registration fee to the retirement system in accordance with this chapter.

(b) A qualified investment product that is offered to an employee on or after January 1, 2008, and that is, or is intended to be, the subject of a salary reduction agreement is required to be registered under this chapter.

(c) A product that is the subject of a salary reduction agreement that is signed before January 1, 2008, is not required to be registered with respect to that salary reduction agreement. If a salary reduction agreement was signed before January 1, 2008, but only the amount of the contribution is changed by agreement of the employee and employer on or after January 1, 2008, the product that is the subject of the salary reduction agreement is not required to be registered with respect to that salary reduction agreement. A company or employee may demonstrate to the educational institution, in a manner deemed acceptable by the institution, that product registration is not required in order for the company to receive contributions to, or payments for purchase of, a qualified investment product that is the subject of the salary reduction agreement signed before January 1, 2008.

(d) The retirement system shall permit a company to apply to register products from November 1 through December 15 and from May 1 through June 15 each calendar year.

(e) The executive director of the retirement system or his designee may establish the form and content of the registration application.

(f) A company is required to certify to the retirement system as required by this chapter in order to apply to register products. A company may submit applications for certification and product registration simultaneously.

§53.16. Procedure for Product Registration.

(a) A company certified to offer a qualified investment product that is an annuity contract may register annuity products. A company certified to offer qualified investment products other than annuity contracts may register such other investment products. A company certified to offer both annuity contracts and qualified investment products other than annuity contracts may register both product types.

(b) A company applies to register products by providing all information required by the retirement system and by paying the required registration fee at the time it submits the application. A company shall submit information in the format and manner required by the retirement system. The retirement system may require a company to provide information electronically.

(c) In applying to register products, a company shall provide information concerning all the fees charged to an employee in connection with the participation in, or purchase of, each registered qualified investment product and the sale and administration of the product, including any specific options available in connection with the registered product if additional or different fees are charged in connection with the options. The information concerning fees shall be provided in the format and manner required by the retirement system.

(d) Information regarding fees shall include any additional fees that may be deducted by an entity other than the company from contributions for a registered product made by salary reduction agreement. In order for a product to be registered, the fees charged by the company and the other entity, when aggregated and deducted from

contributions paid by salary reduction agreement, shall not exceed the amounts established in §53.3 of this title (relating to Maximum Fees, Costs, and Penalties).

(e) Registration to offer products is effective on the date determined by the retirement system after review of the registration application.

(f) Registration remains in effect for a period of five years from the effective date, unless the registration is suspended, revoked, or withdrawn.

(g) A company that has registered to offer products and paid the registration fee shall submit information to the retirement system on each product that is required to be registered. During its five-year registration period, a company may submit information on additional products during the registration dates established in this chapter. Registration of an individual product is effective when the retirement system posts the product on the retirement system Web site. Registration of an individual product terminates when a company's general registration to offer products terminates, regardless of the date on which registration of the individual product was effective.

(h) A company shall correct any erroneous, out of date, or misleading material information provided as part of its registration application or that appears on the retirement system's Web site in connection with a registered product of the company. A company shall notify the retirement system of a correction within 30 calendar days of the occurrence of an event causing a need for a change in the registration information. A company shall notify the retirement system not later than 30 calendar days after the occurrence of an event that causes a product to no longer be eligible to be registered.

(i) A company may update information for its registered products between the registration periods specified in §53.15 of this title (relating to Product Registration Requirement) by submitting the information in the manner established by the retirement system.

(j) The retirement system may deny registration to offer products if the company does not provide all required information, if the information provided indicates the product does not meet the requirements for registration, or if the retirement system receives notification of a violation regarding the product from the Texas Department of Insurance, the Texas State Securities Board, or the company. The retirement system shall deny registration of a product if the company has failed to certify to TRS; if TRS has denied, suspended, or revoked the certification of the company; or if the company has not certified to offer the product type sought to be registered.

(k) The retirement system shall notify a company if it determines that registration should be denied. Additional or corrective information filed within thirty business days following notification of intent to deny shall not require payment of an additional registration fee. Denial of registration is final.

(l) Registration remains in effect in accordance with the provisions of this section unless suspended or revoked by the retirement system. Suspension, withdrawal, or revocation of a company's certification automatically suspends, withdraws, or revokes registration of the company's products.

(m) A company may withdraw its registration to offer products or the registration of an individual product by notifying the retirement system in writing.

(n) Upon suspension or termination of product registration by withdrawal, revocation, or expiration, a company shall not receive additional contributions for the qualified investment product, including a product for which a salary reduction agreement was signed when the product registration was in effect.

(o) A company may notify the retirement system that it will no longer offer a registered product as the subject of new salary reduction agreements. The retirement system may list such products separately on its Web site. A company shall maintain and renew its registration as required under this chapter for any period in which it continues to receive contributions pursuant to existing salary reduction agreements for the product.

§53.18. List of Registered Products.

(a) Upon verification that all required information has been provided in a company's registration application and that the registration fee has been paid, the retirement system will include the company's registered products on the list maintained on the system's Web site.

(b) The retirement system will remove a product from the list upon suspension, revocation, withdrawal, or expiration of the registration.

§53.19. Proceedings to Suspend or Revoke Certification or Registration.

(a) The retirement system may suspend or revoke a registration, certification, or re-certification as provided under Article 6228a-5, Texas Civil Statutes. A proceeding to revoke or suspend is a contested case proceeding under Chapter 2001, Government Code.

(b) A period of suspension of certification or registration shall not extend the five-year period of company certification or product registration.

(c) In lieu of suspension or revocation of a company's registration to offer products and registration of all individual products, the retirement system may suspend or revoke one or more specific registered products if it finds that the grounds for suspension are limited to the specific product or products.

(d) In the event that a company is adversely affected by a decision or action of the retirement system revoking or suspending registration, certification, or re-certification, the company may request review by the chief operating officer of the retirement system.

(e) The chief operating officer shall mail a final written administrative decision, which shall include a statement that the company may appeal the decision to the executive director and the deadline for doing so.

(f) A company adversely affected by a decision of the chief operating officer may appeal the decision to the executive director of TRS as provided in §43.5 of this title (relating to Request for Adjudicative Hearing). The executive director or his designee shall determine whether the appeal should be docketed and set for a contested case hearing pursuant to §43.9 of this title (relating to Docketing of Appeal for Adjudicative Hearing and Dismissal for Failure to Obtain Setting).

(g) The procedures of Chapter 43 of this title (relating to Contested Cases) are adopted by reference for the conduct of a proceeding subject to this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 26, 2007.

TRD-200703251

Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: September 9, 2007
For further information, please call: (512) 542-6438

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34 TAC §53.17

The Teacher Retirement System of Texas (TRS or system) proposes new §53.17 concerning the product registration fee to be paid by companies offering qualified investment products through what are commonly referred to as "403(b) plans," which educational institutions make available to their employees. The 80th Legislature, Regular Session (2007) amended Article 6228a-5, Vernon's Texas Civil Statutes, to require that companies register products offered on or after January 1, 2008. The amendments also authorize TRS to collect a fee from a company that registers a product as required by the new provisions.

Proposed new §53.17 would establish a fee of $5,000 payable when a company submits an application to TRS to register products. Under Article 6228a-5, §8A(e), V.T.C.S., registration would remain in effect for five years, unless denied, revoked, suspended, or withdrawn.

Tony C. Galaviz, TRS Chief Financial Officer, estimates that for each year of the first five years the proposed new rule will be in effect, there will be no foreseeable implications relating to cost or revenues of local governments as a result of enforcing or administering the new rule. Because the proposed section would impose a new fee on affected companies, Mr. Galaviz estimates that TRS fee revenues would increase by approximately $400,000 in the first year of the first five years the proposed new rule will be in effect, based on current certification of approximately 80 companies. Fee revenues would not increase in the remaining four years the proposed new rule will be in effect because registration would remain in effect for five years.

Ronnie Jung, TRS Executive Director, has determined that for each year of the first five years the proposed new rule is in effect the public benefit anticipated as a result of enforcing or administering the section will be to establish the fee needed to cover the anticipated costs of establishing and maintaining a database of registered products on the TRS Web site for the five-year period in which registration remains in effect. The measurable economic cost to companies required to comply with the proposed rule will be to increase the fees they must pay to TRS by $5,000 for each certified company to register all eligible products that it wishes to offer during the five-year registration period, with the fee payable at time of initial application to register products; no additional fee will be payable during the five-year period, even if additional products are registered after the initial registration but within the five-year period. Enforcing or administering the proposed new rule will have the same economic effect on small businesses or micro-businesses that register 403(b) products, since the fee is the same regardless of the size of company that wishes to register products. Because there will be no measurable effect on a local economy or local employment because of the proposed rule, no local employment impact statement is required under Texas Government Code §2001.022.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701. To be considered, written comments must be received by TRS no later than 30 days after publication.

Statutory Authority: New §53.17 is proposed under the following statutes: Article 6228a-5, §6, V.T.C.S., which authorizes the Board to adopt rules for the collection of the 403(b) product registration fee, and §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system.

Cross-reference to Statute: The proposed new rule affects Article 6228a-5, V.T.C.S., §7, which authorizes TRS to collect a product registration fee in the reasonable amount necessary to recover the cost to the system of administering of the 403(b) product registration program, and §8A, which authorizes TRS to establish a program for registering qualified 403(b) products.

§53.17. Product Registration Fee.

(a) A company shall pay a registration fee of $5,000 to the retirement system when the company submits an application to register products.

(b) If TRS denies the application to register products, TRS may retain the amount of the registration fee sufficient to reimburse the retirement system for its administrative costs associated with review of the application. The retirement system may hold the entire registration fee for at least thirty business days after notice that the application is not acceptable in order to determine whether the company will pursue registration by supplementing or revising its application.

(c) No portion of a registration fee is refundable if the retirement system suspends or revokes a registration or if a company withdraws a registration before the end of the registration period.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: September 9, 2007
For further information, please call: (512) 542-6438

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 35. PRIVATE SECURITY

SUBCHAPTER Q. TRAINING

37 TAC §35.257

The Texas Department of Public Safety proposes to amend §35.257, concerning Training Courses. Amendments to the section are necessary in order to eliminate the current requirement that all individuals regulated by the Private Security Board complete certain security officer training, by requiring such training only of security officers and personal protection officers.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be greater efficiency and simplicity in the licensing procedures for certain regulated professions. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Written comments on the proposed amendment are requested and may be sent to Captain Leonard Hinojosa, Manager, Regulatory Licensing Service--Private Security Bureau, P.O. Box 4143, MSC-0242, Austin, Texas 78765-0242, (512) 424-7711.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061(b) are affected by this proposal.

§35.257. Training Courses.

(a) Security and Personal Protection Officer [~~Guard~~] Training Courses.

(1) In accordance with the Act, the following training shall be required of all [~~registrants and commissioned~~] security and personal protection officers, as indicated:

[~~(A) Level I - All registrants, and commissioned security officers including noncommissioned security officers, private investigators, branch office managers, licensed managers, alarm systems monitors, dog trainers and security consultants and excluding alarm installers, alarm salespersons, owner, officers, partners, and shareholders. A certificate indicating completion of Level I training shall be submitted to the board along with the application to register the individual within 14 days after they commence employment.~~]

(A) [~~(B)~~] Level I and II Training - shall be completed by all applicants for a [~~All noncommissioned~~] security officer commission or for registration as a noncommissioned [~~officers and commissioned~~] security officer [~~officers~~]. A certificate indicating completion of Level I and Level II training shall be submitted to the board within 14 days after the commencement of [~~they commence~~] employment.

(B) [~~(C)~~] Level III Training - shall be completed by applicants for a security officer commission and a personal protection officer authorization. A certificate indicating completion of Level III Training shall be submitted to the board along with the application to register the individual. Applicants for either a security officer commission or a personal protection officer authorization who are full-time peace officers, certified by the Texas Commission on Law Enforcement Officer Standards and Education, may be exempted from the Level III training requirements upon submission to the Bureau of a sworn affidavit attesting to the applicant's review of, and familiarity with, Chapter 1702 of the Occupations Code and the related administrative rules.

(2) Level I and Level II may be taught by the manager, the manager's designee or a board approved school and board approved instructor using the most current version of the respective Board Level I and Level II Training Course manuals.

(3) Level III and IV shall be taught by a board approved school and board approved instructor using the most current version of the respective Board Level III and IV manuals.

(4) Training manuals for Levels I, II, III, and IV will be prepared by bureau staff and other qualified individuals selected by the manager.

(5) The passing grade for all examinations shall be a minimum of 75% correct answers.

(b) Alarm Training Courses.

(1) In accordance with the Act, the following training shall be required of an alarm systems installer and a security salesperson:

(A) Alarm Level I - All individuals employed as an alarm systems installer or a security salesperson must hold a certification by a board approved training program to renew an initial registration. An original certificate indicating successful completion of an Alarm Level I training program shall be submitted to the board along with the proper application to renew an initial registration.

(B) The passing grade for all Alarm Level I examinations shall be a minimum of 70% correct answers.

(C) An Alarm Level I program shall be taught by a board approved alarm instructor.

(2) A board approved alarm instructor may teach board approved continuing education courses.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: September 9, 2007
For further information, please call: (512) 424-2135

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 711. INVESTIGATIONS IN DADS MENTAL RETARDATION AND DSHS MENTAL HEALTH FACILITIES AND RELATED PROGRAMS

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§711.1, 711.3, 711.7, 711.11, 711.23, 711.201, 711.401, 711.403, 711.405, 711.415, 711.417, 711.603, 711.605, 711.607, 711.611, 711.613, 711.801, 711.1001, 711.1003, 711.1005, 711.1007, 711.1009, 711.1011, 711.1013, 711.1203, 711.1205, 711.1207, 711.1401, 711.1405, 711.1407, 711.1411, 711.1413, 711.1415, 711.1417, 711.1419, 711.1421, 711.1425, 711.1427, 711.1429, 711.1431, 711.1433, 711.1435; new §711.1002; and the repeal of §711.1209, in its Investiga-

tions in DADS Mental Retardation and DSHS Mental Health Facilities and Related Programs. The purpose of rule changes is to clarify investigator responsibilities when the administrator or CEO of a state-operated mental health or mental retardation facility or related program is the perpetrator or alleged perpetrator in an investigation. The changes also update references to agency names and affected sections of the Texas Administrative Code resulting from the consolidation of the Health and Human Services agencies.

The amendment to §711.3: (1) clarifies that the Texas Home Living Medicaid waiver program is considered a Home and Community Services Waiver (HCSW) program; (2) adds a definition for HCSW CEO/Administrator Designee; (3) updates statutory references to the various professional groups that are Mental Health Service Providers; and (4) clarifies which definitions apply only to community centers and HCSW programs, and which definitions apply only to DADS and DSHS state-operated facilities.

The amendments to §§711.11, 711.23, 711.405, 711.611, and 711.613 update references to the Texas Administrative Code as a result of the consolidation of the Health and Human Services agencies.

Section 711.201 clarifies that allegations may be reported to Statewide Intake via the Internet, in addition to the toll-free number.

Section 711.401 clarifies investigator responsibilities for making notifications at the start of an investigation when the alleged perpetrator is the administrator or CEO.

Section 711.605 clarifies to whom the investigator releases the investigative report when the administrator is the perpetrator or alleged perpetrator.

The title of §711.607 is revised for clarity.

Section 711.1001 clarifies who may request a review of the finding when the administrator or contractor CEO is the perpetrator or alleged perpetrator.

New §711.1002 is added to clarify how a request for review by the administrator is affected by the perpetrator's request for an Employee Misconduct Registry Hearing.

Sections 711.1003, 711.1007, 711.1009, 711.1011, 711.1203, and 711.1207 are revised to change the term "Director" to "Assistant Commissioner." Also, the title of §711.1003 is revised and §711.1207(4)(B) adds language that was repealed in §711.1209, concerning who is notified of an appeal decision.

In addition to the changes already listed above, the other rules in this package are revised to: (1) update the agency name to Department of Family and Protective Services (DFPS); (2) update the agency name of the Texas Department of Mental Health and Mental Retardation (TDMHMR) to Texas Department of Aging and Disability Services (DADS) and Texas Department of State Heath Services (DSHS), as appropriate; (3) update the Consumer Services and Rights Protection (TDMHMR) to Consumer Rights and Services (DADS) and Consumer Services and Rights Protection (DSHS); and (4) update the term "executive director" of DFPS to "commissioner."

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that investigations conducted in DADS Mental Retardation and DSHS Mental Health Facilities and Related Programs will be conducted more efficiently and provide greater protection to persons being served by these facilities and programs. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed amendments, new section, and repeal do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Leti Guevara at (512) 438-5763 in DFPS's Adult Protective Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-366, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

SUBCHAPTER A. INTRODUCTION

40 TAC §§711.1, 711.3, 711.7, 711.11, 711.23

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC, Chapter 48, Subchapters F, H, and I.

§711.1. What is the purpose of this chapter?

The purpose of this chapter is to:

(1) implement the Human Resources Code (HRC) §48.255(a) and (c) and §48.355(c), and Texas Family Code §261.404, which require the Texas Department of Family and Protective [~~and Regulatory~~] Services (DFPS) [~~(PRS)~~] to develop joint rules with the Texas Department of Aging and Disability Services (DADS) and the Texas Department of State Health Services (DSHS) [~~Mental Health and Mental Retardation (TDMHMR)~~] to facilitate investigations in DADS and DSHS [~~TDMHMR~~] facilities and related programs;

(2) describe Adult Protective Services investigations of allegations involving adults and children in the following programs:

(A) DADS and DSHS [~~TDMHMR~~] facilities;

(B) - (E) (No change.)

(3) - (4) (No change.)

(5) implement Human Resources Code, Chapter 48, Subchapter I, relating to the Employee Misconduct Registry maintained by the Texas Department of Aging and Disability [~~Human~~] Services,

as described in Subchapter O of this chapter (relating to Employee Misconduct Registry).

§711.3. How are the terms in this chapter defined?

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

(1) - (2) (No change.)

(3) APS--Adult Protective Services, a division of DFPS [~~PRS~~].

(4) - (8) (No change.)

(9) Consumer Rights and Services--The unit at DADS' state office charged with protecting the rights of persons served.

(10) Consumer Services and Rights Protection--The unit at DSHS' central office charged with protecting the rights of persons served.

(11) [~~(9)~~] Contractor--Any organization, entity, or individual who contracts with a facility, local authority, community center, or HCSW to provide mental health and/or mental retardation services directly to a person served. The term includes a local independent school district with which a facility, local authority, or community center has a memorandum of understanding (MOU) for educational services.

(12) [~~(10)~~] Contractor CEO--The person in charge of a contractor that has one or more employees, excluding the CEO.

[~~(11) CSRP or Consumer Services and Rights Protection - Ombudsman Office--The office at TDMHMR's Central Office charged with protecting the rights of persons served.~~]

(13) DADS--Department of Aging and Disability Services.

(14) DFPS--Department of Family and Protective Services.

(15) DSHS--Department of State Health Services.

(16) [~~(12)~~] Emergency order for protective services--A court order for protective services obtained under Human Resources Code, §48.208.

(17) [~~(13)~~] Emergency services--Services necessary to immediately protect a person served by an HCSW from serious physical harm or death. Examples include, but are not limited to, arranging for:

(A) an emergency order for protective services;

(B) shelter;

(C) medical and psychiatric assessments and/or treatment; and

(D) food, medication, or other supplies.

(18) [~~(14)~~] Facility--A state hospital, state school, or state center that is operated by DADS or DSHS [~~TDMHMR~~].

(19) [~~(15)~~] Home and community-based services waiver (HCSW) programs [~~program (HCSW)~~]--The Home and Community-based Services and the Texas Home Living Medicaid waiver programs authorized under the Social Security Act, §1915(c), operated by DADS [~~TDMHMR~~] under the authority of the Texas Health and Human Services Commission, that are exempt from licensure in accordance with Health and Safety Code, §142.003(a)(19).

(20) HCSW CEO/Administrator Designee--The person designated by a CEO or administrator of a HCSW to perform the duties of the CEO/Administrator for the purposes of the investigation when the CEO/Administrator is the alleged perpetrator in an investigation.

(21) [~~(16)~~] Incitement--To spur to action or instigate into activity; implies responsibility for initiating another's actions.

(22) [~~(17)~~] Individual with a disability receiving services--A disabled person as defined in the Human Resources Code, Chapter 48, receiving services from a:

(A) facility, local authority, community center, HCSW; or

(B) contractor or agent of one of the programs listed in subparagraph (A) of this paragraph.

(23) [~~(18)~~] Investigator--An employee of the division of Adult Protective Services who has:

(A) demonstrated competence and expertise in conducting investigations; and

(B) received training on techniques for communicating effectively with individuals with a disability.

(24) [~~(19)~~] Local authority--An entity designated by the DADS or DSHS [~~TDMHMR~~] commissioner in accordance with the Texas Health and Safety Code, §533.035(a).

(25) [~~(20)~~] Mental health services provider--In accordance with the Texas Civil Practice and Remedies Code, §81.001, an individual, licensed or unlicensed, who performs or purports to perform mental health services, including a:

(A) licensed social worker as defined by §505.002, Occupations Code [~~the Human Resources Code, §50.001~~];

(B) chemical dependency counselor as defined by §504.001, Occupations Code [~~Texas Civil Statutes, Article 4512o~~];

(C) licensed professional counselor as defined by §503.002, Occupations Code [~~in §2 of the Licensed Professional Counselor Act, (Texas Civil Statutes, Article 4512g)~~];

(D) licensed marriage and family therapist as defined by §502.002, Occupations Code [~~in §2, Licensed Marriage and Family Therapist Act, (Texas Civil Statutes, Article 4512c-1)~~];

(E) member of the clergy;

(F) physician who is practicing medicine as defined by §151.002, Occupations Code [~~in §1.03 of the Medical Practice Act, (Texas Civil Statutes, Article 4495b)~~];

(G) psychologist offering psychological services as defined by §501.003, Occupations Code [~~in §2 of the Psychologists' Certification and Licensing Act, (Texas Civil Statutes, Article 4512c)~~]; or

(H) special officer for mental health assignment certified under §1701.404, Occupations Code [~~the Government Code, §415.037~~].

(26) [~~(21)~~] Non-serious physical injury (in Community Centers and HCSW Programs)--Any injury determined not to be serious by the appropriate medical personnel. Examples of non-serious physical injury include the following:

(A) superficial laceration;

(B) contusion two and one-half inches in diameter or smaller; or

(C) abrasion.

(27) [~~(22)~~] Non-serious physical injury (in DADS and DSHS [~~MHMR~~] facilities only)--Any injury requiring minor first aid and determined not to be serious by a registered nurse, advanced practice nurse (APN), or physician.

(28) [~~(23)~~] Peer review--A review of clinical and/or:

(A) medical practice(s) by peer physicians;

(B) dental practice(s) by peer dentists;

(C) pharmacy practice(s) by peer pharmacists; or

(D) nursing practice(s) by peer nurses.

(29) [~~(24)~~] Perpetrator--A person who has committed an act of abuse, neglect, or exploitation.

(30) [~~(25)~~] Person served--An individual with a disability receiving services, or a child receiving services in a:

(A) facility or HCSW who is registered or assigned in the Client Assignment and Registration (CARE) system; or

(B) community center or local authority who is registered or assigned in CARE or who is otherwise receiving services from a community center or local authority, either directly or by contract.

(31) [~~(26)~~] Preponderance of evidence--The greater weight of evidence, or evidence which is more credible and convincing to the mind.

(32) [~~(27)~~] Prevention and management of aggressive behavior (PMAB)--DADS and DSHS' [~~TDMHMR's~~] proprietary risk management program that uses the least intrusive, most effective options to reduce the risk of injury for persons served and staff from acts or potential acts of aggression.

(33) [~~(28)~~] Professional review--A review of clinical and/or professional practice(s) by peer professionals.

(34) [~~(29)~~] Program--A facility, local authority, community center, or HCSW.

~~[(30) PRS--Texas Department of Protective and Regulatory Services.]~~

(35) [~~(31)~~] Reporter--The person, who may be anonymous, making an allegation.

(36) [~~(32)~~] Serious physical injury (in Community Centers and HCSW Programs)--Any injury determined to be serious by the appropriate medical personnel. Examples of serious physical injury include the following:

(A) fracture;

(B) dislocation of any joint;

(C) internal injury;

(D) contusion larger than two and one-half inches in diameter;

(E) concussion;

(F) second or third degree burn; or

(G) any laceration requiring sutures.

(37) [~~(33)~~] Serious physical injury (in DADS and DSHS [~~MHMR~~] facilities only)--Any injury requiring medical intervention or hospitalization or any injury determined to be serious by a physician or advanced practice nurse (APN). Medical intervention is treatment by a licensed medical doctor, osteopath, podiatrist, dentist, physician's assistant, or advanced practice nurse (APN). For the purposes of this subchapter, medical intervention does not include first aid, an examination, diagnostics (e.g., x-ray, blood test), or the prescribing of oral or topical medication.

(38) [~~(34)~~] Sexually transmitted disease--Any infection with or without symptoms or clinical manifestations that can be transmitted from one person to another by sexual contact.

~~[(35) TDMHMR--Texas Department of Mental Health and Mental Retardation.]~~

(39) [~~(36)~~] Victim--A person served who is alleged to have been abused, neglected, or exploited.

§711.7. What does APS not investigate under this chapter?

APS does not investigate:

(1) if another branch of DFPS [~~PRS~~] or another state agency is responsible under state law for the investigation;

(2) (No change.)

(3) if the allegation [~~it~~] involves only the clinical practice of a physician, dentist, registered nurse, licensed vocational nurse, or pharmacist.

§711.11. How is physical abuse defined?

In this chapter, when the alleged perpetrator is an employee, agent, or contractor, physical abuse is defined as:

(1) - (2) (No change.)

(3) the use of chemical or bodily restraints on a person served not in compliance with federal and state laws and regulations, including:

(A) 25 TAC Chapter 415 [~~405~~], Subchapter F (relating to [~~Voluntary and Involuntary Behavioral~~] Interventions in Mental Health Programs);

(B) 40 TAC Chapter 5, Subchapter H, (relating to Use of Restraints in State Mental Retardation Facilities) [~~25 TAC Chapter 405, Subchapter H, (relating to Behavior Management - Facilities Serving Persons with Mental Retardation)~~]; and

~~[(C) 25 TAC Chapter 409, Subchapter L (relating to Mental Retardation Local Authority (MRLA) Pilot Program);]~~

(C) [~~(D)~~] 40 TAC Chapter 9, Subchapter D (relating to Home and Community-based Services (HCS) Program) and 40 TAC Chapter 9, Subchapter N (relating to Texas Home Living (TxHmL) Program). [~~25 TAC Chapter 419, Subchapter D (relating to Home and Community-based Services (HCS) Program); and~~]

~~[(E) 25 TAC Chapter 419, Subchapter P (relating to Home and Community-based Services - OBRA (HCS-O) Program).]~~

§711.23. What is not considered abuse, neglect, or exploitation?

Abuse, neglect, and exploitation do not include the following:

(1) the proper use of restraints and seclusion, including Prevention and Management of Aggressive Behavior (PMAB), and the approved application of behavior modification techniques as described in:

(A) 25 TAC Chapter 415 [~~405~~], Subchapter F (relating to [~~Voluntary and Involuntary Behavioral~~] Interventions in Mental Health Programs);

(B) (No change.)

(C) 40 TAC Chapter 5, Subchapter H (relating to Use of Restraints in State Mental Retardation Facilities) [~~25 TAC Chapter 405, Subchapter H (relating to Behavior Management - Facilities Serving Persons With Mental Retardation)~~];

(2) actions taken in accordance with the rules of the Texas Department of Aging and Disability Services and the Texas Depart-

ment of State Health Services [~~Mental Health and Mental Retardation~~]; or

(3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3437

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SUBCHAPTER C. DUTY TO REPORT

40 TAC §711.201

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC, Chapter 48, Subchapters F, H, and I.

§711.201. What is your duty to report if you are an employee, agent, or contractor of a facility, local authority, community center, or HCSW?

If you know or suspect that a person served is being or has been abused, neglected, or exploited or if you know or suspect that a person served who is a resident of a facility or facility contractor meets other criteria specified in §711.5(b) of this title (relating to What does APS investigate under this chapter?), you must:

(1) report such knowledge or suspicion to DFPS [~~PRS~~] immediately, if possible, but in no case more than one hour after knowledge or suspicion by calling the DFPS [~~PRS~~] toll-free number at 1-800-647-7418 or by use of the Internet at https://www.txabusehotline.org/notice-aps.asp;

(2) preserve and protect any evidence related to the allegation in accordance with instructions from DFPS [~~PRS~~]; and

(3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER E. CONDUCTING THE INVESTIGATION

40 TAC §§711.401, 711.403, 711.405, 711.415, 711.417

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC, Chapter 48, Subchapters F, H, and I.

§711.401. Who and when does the investigator notify of an allegation and when is the identity of the reporter revealed?

(a) Except as provided in subsection (b) of this section, the investigator makes the following notifications, as appropriate: [~~The investigator notifies the following of an allegation:~~]
Figure: 40 TAC §711.401(a)
[~~Figure: 40 TAC §711.401~~]

(b) If the administrator or CEO is the alleged perpetrator, the investigator makes other notifications, in subsection (a) of this section, as appropriate, but instead of notifying the administrator or CEO:
Figure: 40 TAC §711.401(b)

§711.403. Who and when does the investigator notify upon receiving an allegation that relates to a general complaint?

Within 24 hours or the next working day following receipt of an allegation that relates to a general complaint, as described in §711.7(2) of this title (relating to What does APS not investigate under this chapter?), the investigator notifies the following of the general complaint:

(1) (No change.)

(2) Consumer Rights and Services [~~CSRP~~], if the complaint involves an HCSW.

§711.405. What action does the investigator take if the alleged perpetrator is a physician, dentist, registered nurse, licensed vocational nurse, or pharmacist for a facility?

(a) The investigator meets with the administrator, and the facility medical, dental, nursing or pharmacy director, as appropriate, to determine whether the allegation involves clinical practice, in accordance with 25 TAC §417.509(a) and 40 TAC §7.509(a) (relating to Peer Review).

(b) If it is determined that the allegation involves clinical practice, then the investigator refers the allegation to the administrator for peer review in accordance with 25 TAC §417.509(a)(2) and 40 TAC §7.509(a)(2) [~~(relating to Peer Review)~~].

(c) (No change.)

(d) If it is determined that the allegation involves both clinical practice and non-clinical issues, then the investigator refers the allegation to the administrator for peer review in accordance with 25 TAC §417.509(a)(3) and 40 TAC §7.509(a)(3) [~~(relating to Peer Review)~~] and conducts an investigation.

§711.415. What are the requirements for face-to-face contact with the alleged victim?

The investigator must make a face-to-face contact with the alleged victim within the following time frames:
Figure: 40 TAC §711.415

§711.417. When must the investigator complete the investigation?

(a) Unless an extension is granted in accordance with §711.419 of this title (relating to What if the investigator cannot complete the investigation on time?), the investigator must complete the investigation within the following time frames:
Figure: 40 TAC §711.417(a)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams
General Counsel
Department of Family and Protective Services
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SUBCHAPTER G. RELEASE OF REPORT AND FINDINGS

40 TAC §§711.603, 711.605, 711.607, 711.611, 711.613

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC, Chapter 48, Subchapters F, H, and I.

§711.603. What is included in the investigative report?

The investigative report includes the following:

(1) - (7) (No change.)

(8) the physician's exam and treatment of abuse/neglect-related injuries documented on the DADS or DSHS [~~TDMHMR~~] Client Injury/Incident Report (facilities only);

(9) - (11) (No change.)

§711.605. Who receives the investigative report?

(a) The investigator sends a copy of the investigative report to:

(1) the administrator, and when appropriate, the contractor CEO except as described in paragraph (4) of this subsection;[~~.~~]

[~~(A) If the administrator is the perpetrator or alleged perpetrator, the investigator only releases the report to CSRP.~~]

[~~(B) If the contractor CEO is the perpetrator or alleged perpetrator, the investigator only releases the report to the administrator;~~]

(2) Consumer Rights and Services [~~CSRP~~], if the investigation involves an HCSW;

(3) local law enforcement if the investigation confirms that a person served has been abused, neglected, or exploited in a manner that constitutes a criminal offense under any law, including the Texas Penal Code, §22.04; [~~and~~]

(4) the following, if the administrator or contractor CEO is the perpetrator or alleged perpetrator:

(A) State Hospitals--the Assistant Commissioner for Mental Health Substance Abuse Services, DSHS, Mail Code 2053, P.O. Box 12668, Austin, TX 78711-2668.

(B) State Schools/State Centers--the Director of State Schools, DADS, Mail Code W-511, P.O. Box 149030, Austin, TX 78714-9030.

(C) Community Centers--the:

(i) Chair of the Community Center Board of Trustees;

(ii) Assistant Commissioner for Mental Health and Substance Abuse Services; and

(iii) Assistant Commissioner for Access & Intake, DADS, Mail Code W-350, P.O. Box 149030, Austin, TX 78714-9030.

(D) HCSW Programs--the HCSW CEO/Administrator Designee instead of the CEO/Administrator.

(E) Contractor CEO--the administrator; and

(5) [~~(4)~~] the state office of Adult Protective Services if a confirmed finding is made against a physician, dentist, pharmacist, registered nurse, licensed vocational nurse, or other licensed professional. The state office forwards a copy of the report to the appropriate licensing authority.

(b) Law enforcement or a prosecutor may request that DFPS [~~PRS~~] delay the release of the investigative report to anyone listed in subsection (a)(1) or (2) [~~(a)(1), (2), or (4)~~] of this section, or may request that DFPS delay forwarding a copy of the report to the appropriate licensing authority.

§711.607. Does the investigator reveal the identity of the reporter in the investigative report released to the administrator, contractor CEO, or Consumer Rights and Services [~~CSRP~~]?

The name of the reporter is released only if the allegation involves sexual exploitation and the perpetrator or alleged perpetrator is a mental health service provider, in accordance with the Texas Civil Practice and Remedies Code, Chapter 81.

§711.611. Is the victim or alleged victim, guardian, or parent notified of the finding?

Yes. The victim or alleged victim, guardian, or parent (if the victim or alleged victim is a child) is notified of the finding of the investigation

and the method to appeal the finding, in accordance with the following rules of DADS and DSHS [~~TDMHMR~~]:

(1) for state hospitals [~~facilities~~]--25 TAC §417.510 (relating to Completion of the Investigation);

(2) for state schools and state centers--40 TAC §7.510 (relating to Completion of the Investigation;

(3) [~~(2)~~] for local authorities and community centers--25 TAC §414.555 and 40 TAC §4.555 (relating to Information To Be Provided to Victim or Alleged Victim and Others); or

(4) [~~(3)~~] for HCSW programs [~~HCSWs~~]--40 TAC Chapter 9, Subchapter D (relating to Home and Community-based Services (HCS) program) and 40 TAC Chapter 9, Subchapter N (relating to Texas Home Living (TxHmL) program).

~~[(A) 25 TAC Chapter 419, Subchapter D (relating to Home and Community-based Services (HCS) Program);]~~

~~[(B) 25 TAC Chapter 409, Subchapter L (relating to Mental Retardation Local Authority Pilot (MRLA) Program; or]~~

~~[(C) 25 TAC Chapter 419, Subchapter P (relating to Home and Community-based Services - OBRA (HCS-O) Program).]~~

§711.613. Can the investigative report be released?

~~[Yes, but any information must be concealed that would reveal the identities of the reporter and any person served who is not the victim or alleged victim.]~~ Upon request, the investigative report (with any information concealed that would reveal the identities of the reporter and any person served who is not the victim or alleged victim) may be released [~~to~~]:

(1) for facilities and their contractors, to the victim or alleged victim, guardian, or parent (if the victim or alleged victim is a child), in accordance with 25 TAC §417.511(b) and 40 TAC §7.511(b) (relating to Confidentiality of Investigative Process and Report), or perpetrator in accordance with 25 TAC §417.512(d) and 40 TAC §7.512(d) (relating to Classifications and Disciplinary Actions);

(2) for local authorities, community centers, and their respective contractors to:

(A) the victim or alleged victim, guardian, or parent (if the victim or alleged victim is a child), in accordance with 25 TAC §414.559(b) and 40 TAC §4.559(b) (relating to Confidentiality of Investigative Process and Report); and

(B) (No change.)

(3) for HCSWs and their contractors, to the victim or alleged victim, guardian, or parent (if the victim or alleged victim is a child), in accordance with 40 TAC Chapter 9, Subchapter D (relating to Home and Community-based Services (HCS)) and 40 TAC Chapter 9, Subchapter N (relating to Texas Home Living (TxHmL) Program).[~~:~~]

~~[(A) 25 TAC Chapter 419, Subchapter D (relating to Home and Community-based Services (HCS);]~~

~~[(B) 25 TAC Chapter 409, Subchapter L (relating to Mental Retardation Local Authority Pilot (MRLA) Program); or]~~

~~[(C) 25 TAC Chapter 419, Subchapter P (relating to Home and Community-based Services - OBRA (HCS-O) Program.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams
General Counsel
Department of Family and Protective Services
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♦ ♦ ♦

SUBCHAPTER I. PROVISION OF SERVICES

40 TAC §711.801

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC, Chapter 48, Subchapters F, H, and I.

§711.801. What action does the investigator take if a person served by an HCSW needs emergency services?

(a) - (b) (No change.)

(c) The investigator informs Consumer Rights and Services [~~CSRP~~] of the investigator's determination that a person served by an HCSW was in immediate threat of serious physical harm or death as a result of abuse, neglect, or exploitation, within 24 hours or the next working day of such determination.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER K. REQUESTING A REVIEW OF FINDING IF YOU ARE THE ADMINISTRATOR OR CONTRACTOR CEO

40 TAC §§711.1001 - 711.1003, 711.1005, 711.1007, 711.1009, 711.1011, 711.1013

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and

Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement HRC, Chapter 48, Subchapters F, H, and I.

§711.1001. What if the administrator or contractor CEO wants to request a review of [~~challenge~~] the finding or the methodology used to conduct the investigation?

(a) The administrator or contractor CEO may request a review of the finding or methodology used to conduct the investigation if he or she is not the perpetrator or alleged perpetrator.

~~[(1) If the administrator is the perpetrator or alleged perpetrator then only TDMHMR may request a review.]~~

~~[(2) If the contractor CEO is the perpetrator or alleged perpetrator then only the administrator may request a review.]~~

(b) If the administrator is the perpetrator or alleged perpetrator, then the following may request a review:

(1) In facilities, the DADS or DSHS state office.

(2) In community centers, the Chair of the Community Center Board of Trustees.

(3) In HCSW programs, the HCS CEO/Administrator Designee instead of the CEO/Administrator.

(c) If the contractor CEO is the perpetrator or alleged perpetrator, then the administrator may request a review.

~~[(b) If the alleged perpetrator requests a hearing in accordance with Subchapter O of this chapter (relating to the Employee Misconduct Registry), a request for review will not be accepted and processed unless:]~~

~~[(1) the alleged perpetrator withdraws his request for a hearing; or]~~

~~[(2) PRS determines prior to the hearing that the alleged act does not meet the criteria for reportable conduct.]~~

~~[(c) If the alleged perpetrator requests a hearing in accordance with Subchapter O of this chapter, and the hearing is conducted, a request for review will not be processed.]~~

§711.1002. How is a request for review affected by a perpetrator's request for an EMR hearing?

If the designated perpetrator requests a hearing in accordance with Subchapter O of this chapter (relating to Employee Misconduct Registry), a request for review will be suspended and the results of the EMR hearing will serve as a finding on the request for review.

§711.1003. How is [~~does the administrator or contractor CEO request~~] a review as described in §711.1001 of this title (relating to What if the administrator or contractor CEO wants to request a review of the finding or the methodology used to conduct the investigation?) requested?

To request a review, the administrator or contractor CEO must:

(1) complete DFPS' [~~PRS's~~] "Request for Review of Finding" form; and

(2) send the completed "Request for Review of Finding" form and a copy of the investigative report as described in §711.603 of this title (relating to What is included in the investigative report?) to:

(A) (No change.)

(B) the Assistant Commissioner [~~Director~~] of Adult Protective Services, DFPS [~~PRS~~], P.O. Box 149030, E-561, Austin, Texas, 78714-9030, if the request is to challenge the finding.

§711.1005. Is there a deadline to request a review?

Yes. The deadline for requesting a review is the 30th calendar day from the day the report was signed and dated by the investigator. DFPS [~~PRS~~] will not accept a request for review received after the 30th calendar day from the day the investigative report was signed and dated by the investigator.

§711.1007. How is the review of a finding conducted?

The review of a finding is conducted by a reviewer, designated by the Assistant Commissioner [~~Director~~] of Adult Protective Services, who:

(1) - (4) (No change.)

§711.1009. How is the review of the methodology conducted?

The review of the methodology is conducted by the regional APS program administrator or a reviewer, designated by the Assistant Commissioner [~~Director~~] of Adult Protective Services, who:

(1) - (5) (No change.)

§711.1011. What if the administrator or contractor CEO wants to challenge the methodological review decision(s) made by the regional APS program administrator?

To challenge the methodological review decision, the administrator or contractor CEO must:

(1) complete DFPS' [~~PRS's~~] "Request for Review of Finding" form; and

(2) send the completed "Request for Review of Finding" form and a copy of the investigative report as described in §711.603 of this title (relating to What is included in the investigative report?) to the Assistant Commissioner [~~Director~~] of Adult Protective Services, DFPS [~~TDPRS~~], P.O. Box 149030, E-561, Austin, Texas, 78714-9030.

§711.1013. What if the administrator of a facility disagrees with the finding review decision?

If the administrator or a facility disagrees with the finding review decision, as referenced in §711.1007 of this title (relating to How is the review of a finding conducted?), then he or she may contest the decision in accordance with 25 TAC §417.510(g)(2) and 40 TAC §7.510(g)(2) (relating to Completion of the Investigation).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Department of Family and Protective Services
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SUBCHAPTER M. REQUESTING AN APPEAL IF YOU ARE THE REPORTER, ALLEGED VICTIM, LEGAL GUARDIAN, OR WITH ADVOCACY, INCORPORATED

40 TAC §§711.1203, 711.1205, 711.1207

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC, Chapter 48, Subchapters F, H, and I.

§711.1203. How does the reporter, victim or alleged victim, legal guardian or parent, or Advocacy, Inc. request an appeal?

An appeal is requested by:

(1) submitting a request in writing to the Assistant Commissioner [~~Director~~] of Adult Protective Services, [~~Texas~~] Department of Family and Protective [~~and Regulatory~~] Services, P.O. Box 149030, E-561, Austin, Texas, 78714-9030; or

(2) calling DFPS [~~PRS~~] toll-free at 1-888-778-4766.

§711.1205. Is there a deadline to request an appeal?

Yes. The deadline for requesting an appeal of the finding is the 60th calendar day from the day the investigative report was signed and dated by the investigator. DFPS [~~PRS~~] may accept a request for appeal after the 60th calendar day for good cause as determined by DFPS [~~PRS~~] (for example, difficulty accessing a copy of the investigative report).

§711.1207. How is the appeal conducted?

The appeal of a finding is conducted by a reviewer, designated by the Assistant Commissioner [~~Director~~] of Adult Protective Services, who:

(1) - (3) (No change.)

(4) notifies the following individuals in writing of the appeal decision:

(A) the requestor; [~~and~~]

(B) the victim or alleged victim, guardian, or parent (if the victim is a child); and

(C) [~~(B)~~] as appropriate, the administrator, contractor CEO, or Consumer Rights and Services [~~CSRP~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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40 TAC §711.1209

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC, Chapter 48, Subchapters F, H, and I.

§711.1209. What happens at the conclusion of the appeal?

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER O. EMPLOYEE MISCONDUCT REGISTRY

40 TAC §§711.1401, 711.1405, 711.1407, 711.1411, 711.1413, 711.1415, 711.1417, 711.1419, 711.1421, 711.1425, 711.1427, 711.1429, 711.1431, 711.1433, 711.1435

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC, Chapter 48, Subchapters F, H, and I.

§711.1401. What is the purpose of this subchapter?

The purpose of this subchapter is to implement Human Resources Code, Chapter 48, Subchapter I, relating to the Employee Misconduct Registry maintained by the Texas Department of Aging and Disability [~~Human~~] Services.

§711.1405. How are some of the terms in this subchapter defined?

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Commissioner--The commissioner of the Department of Family and Protective Services (DFPS), or the commissioner's designee.

(2) [~~(1)~~] Employee--A person who:

(A) works for an agency as defined in Human Resources Code, §48.401(1);

(B) works as an employee, agent, or contractor for a home and community support services agency (HCSSA) or HCSW;

(C) provides personal care services, active treatment, or any other personal services to an individual receiving services from a HCSSA or HCSW; and

(D) is not licensed by the state to perform the services the person performs for the HCSSA or HCSW.

(3) [~~(2)~~] Employee Misconduct Registry--The registry established under Health and Safety Code, Chapter 253.

[~~(3) Executive director--The executive director of the Texas Department of Protective and Regulatory Services (PRS), or the executive director's designee.~~]

(4) Hearings examiner--A DFPS [~~PRS~~] attorney designated to conduct a hearing to appeal a finding of reportable conduct.

(5) - (6) (No change.)

§711.1407. What is the Employee Misconduct Registry?

The Employee Misconduct Registry is a database maintained by the Texas Department of Aging and Disability [~~Human~~] Services that contains the names of persons who have committed reportable conduct. A person whose name is recorded in the registry is prohibited by law from working for certain facilities or agencies, as provided under Health and Safety Code, Chapter 253, and Health and Safety Code, §250.003(c).

§711.1411. Under what circumstances does DFPS [~~PRS~~] submit an employee's name to the Employee Misconduct Registry?

When DFPS [~~PRS~~] determines that an employee has committed reportable conduct, DFPS [~~PRS~~] must submit the employee's name and other relevant information to the Texas Department of Aging and Disability [~~Human~~] Services for recording in the Employee Misconduct Registry, unless the finding of reportable conduct is overturned as a result of an appeal filed under this subchapter.

§711.1413. Is DFPS [~~PRS~~] required to give notice of finding of reportable conduct to the employee before the employee's name is submitted to the Employee Misconduct Registry?

(a) Yes. When APS determines that an employee committed reportable conduct, APS must mail a written "Notice of Finding" to the employee's last known address by both certified mail, return receipt requested, and by regular mail. The notice must include:

(1) - (2) (No change.)

(3) a statement that DFPS [~~PRS~~] will submit the employee's name for inclusion in the Employee Misconduct Registry if the employee accepts the finding of reportable conduct or fails to file a timely Request for Hearing;

(4) - (5) (No change.)

(b) - (c) (No change.)

§711.1415. How does an employee file a Request for Hearing and what happens if a request is not filed or not filed properly?

(a) (No change.)

(b) The employee will be deemed to have accepted the finding of reportable conduct and DFPS [~~PRS~~] will submit the employee's name for inclusion in the Employee Misconduct Registry if the employee:

(1) (No change.)

(2) files a Request for Hearing, but fails to follow the filing instructions and, as a result, DFPS [~~PRS~~] does not receive the Request for Hearing in a timely manner or cannot determine the matter being appealed.

§711.1417. What is the deadline for filing the Request for Hearing?

(a) - (b) (No change.)

(c) If the Request for Hearing is submitted by mail, the envelope must be postmarked no later than 30 days after the date the employee received the Notice of Finding. If the Request for Hearing is hand-delivered or submitted by fax, the request must be received in the appropriate DFPS [~~PRS~~] office by 5:00 p.m., no later than 30 days from the date the employee received the Notice of Finding.

(d) If an employee files the Request for Hearing after the deadline, DFPS [~~PRS~~] will notify the employee that the request was not filed by the deadline and that the employee's name will be submitted for inclusion in the Employee Misconduct Registry.

(e) If an employee disputes the fact that the Request for Hearing was filed late, the employee may request, and DFPS [~~PRS~~] will grant, a hearing that is limited solely to the issue of whether the Request for Hearing was filed on time. If, as a result of that hearing, the employee can prove that the original Request for Hearing was filed on or before the deadline, a separate hearing will be scheduled as soon as possible on the issue of whether the employee committed reportable conduct.

§711.1419. Is a finding of reportable conduct ever reversed without conducting a hearing?

Prior to a hearing, APS, in its sole discretion, may designate a person to conduct a review of the investigation records. If a review of the records results in a reversal of the finding of reportable conduct, APS will send the employee a new Notice of Finding, which will indicate that the employee's name will not be submitted to the Employee Misconduct Registry. If the review does not result in a reversal of the finding DFPS [~~PRS~~] will designate a hearings examiner to schedule and conduct a hearing, as described in this subchapter.

§711.1421. When and where will the hearing take place?

(a) DFPS [~~PRS~~] will schedule a hearing as soon as possible and will send a "Notice of Hearing" to the employee and to APS within 45 days of when DFPS [~~PRS~~] receives a timely Request for Hearing.

(b) (No change.)

(c) The hearing will usually be held in the same DFPS [~~PRS~~] region where the alleged reportable conduct took place. The hearings examiner reserves the right to take all or some of the testimony at the hearing by telephone- or video-conference and may consider a request by any party to have the hearing conducted in a different location for good cause.

§711.1425. May an employee withdraw a Request for Hearing after it is filed?

Yes. An employee may withdraw a Request for Hearing any time before the hearing is conducted. An employee who withdraws a Request for Hearing will be deemed to have accepted the finding of reportable conduct and DFPS [~~PRS~~] will submit the employee's name for inclusion in the Employee Misconduct Registry.

§711.1427. How is the hearing conducted?

(a) - (j) (No change.)

(k) The hearing will be recorded by audio or video tape in order to preserve a record of the hearing. DFPS [~~PRS~~] will not prepare a transcription of the hearing tape unless an employee seeks judicial review, as provided in this subchapter.

(l) If the employee fails to appear for the hearing to offer testimony and evidence, the employee will be deemed to have accepted the finding of reportable conduct and DFPS [~~PRS~~] will submit the employee's name for inclusion in the Employee Misconduct Registry.

§711.1429. How and when is the decision made after the appeal hearing?

(a) The hearings examiner will prepare a proposed decision which includes findings of fact and conclusions of law based on a preponderance of the evidence presented at the hearing. The proposed decision will be forwarded to the commissioner [~~executive director~~] for review.

(b) The commissioner [~~executive director~~] may accept or reject the proposed decision in whole or in part. If deemed necessary for a proper decision, the commissioner [~~executive director~~] may question the hearings examiner regarding the testimony and evidence presented at the hearing, may review all or part of the hearing record, and may direct the hearings examiner to take such additional testimony or evidence as the commissioner [~~executive director~~] deems necessary.

(c) After review of the proposed decision and any evidence described in subsection (b) of this section, the commissioner [~~executive director~~] must issue a written "Hearing Order" which will be mailed to the employee at the employee's last known mailing address. The Hearing Order must contain the following:

(1) - (2) (No change.)

(3) a statement that the finding of reportable conduct will be forwarded to the Texas Department of Aging and Disability [~~Human~~] Services to be recorded in the Employee Misconduct Registry unless the employee makes a timely request for judicial review and the court reverses the finding of reportable conduct.

(d) The commissioner [~~executive director~~] may designate a Hearing Order to be published in an Index of Hearing Orders that are deemed to have precedential authority for guiding future decisions and DFPS [~~PRS~~] policy. A Hearing Order must be edited to remove all personal identifying information before publication in the Index of Hearing Orders.

§711.1431. How is judicial review requested and what is the deadline?

(a) - (c) (No change.)

(d) Unless notice of petition for judicial review is served on DFPS [~~PRS~~] within 45 days after the date on which the Hearing Order is mailed to the employee, DFPS [~~PRS~~] will submit the employee's name for inclusion in the Employee Misconduct Registry. If valid service is received after the employee's name has been recorded in the registry, DFPS [~~PRS~~] will immediately request that the employee's name be removed from the registry pending the outcome of the judicial review.

§711.1433. Must DFPS [~~PRS~~] provide notice to anyone else if a finding is modified or reversed as the result of a review, a hearing, or judicial review?

(a) Yes. If at any stage the finding of reportable conduct is modified or reversed, DFPS [~~PRS~~] must provide notice of the new finding to all entities that DFPS [~~PRS~~] notified of the original finding.

(b) (No change.)

§711.1435. If an employee accepts a finding of reportable conduct or the finding is upheld on appeal, what information is forwarded to the Texas Department of Aging and Disability [~~Human~~] Services for recording in the Employee Misconduct Registry?

By law, DFPS [~~PRS~~] must forward the following information to be recorded in the registry:

(1) - (3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams
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Department of Family and Protective Services
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CHAPTER 732. CONTRACTED SERVICES

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§732.105, 732.240, 732.241, and 732.243, concerning are all contracting procedures and criteria contained in this chapter, what are the general principles of allowable and unallowable costs, what happens if a cost is not allowable, and employee compensation; and the repeal of §732.256, concerning unallowable costs, in its Contracted Services chapter. The purpose of the amendments and repeal is to state that DFPS' residential child-care contracts are subject to the HHSC rules found in 1 TAC Chapter 355, Reimbursement Rates; and clarify that the DFPS rules relating to allowable and unallowable costs do not apply to DFPS residential child-care contracts.

A new subsection (c) is added to §732.105 to clarify that allowable and unallowable costs for residential child-care contracts are governed by the HHSC rules, the reference to §732.256 is deleted, and the term "executive director" is changed to "commissioner."

A new subsection (j) is added to §732.240 to clarify that allowable and unallowable costs for residential child-care contracts are governed by the HHSC rules.

In §732.241, subsection (b) is deleted because the information applies to "improper payments," which is already covered in §732.303(a) of this title (relating to Recoupment of Improper Payments).

In §732.243 the reference to §732.256 is deleted and the agency name is updated.

Section 732.256 is repealed because the rules relating to allowable and unallowable costs for residential child-care contracts are governed by the HHSC rules, and this rule is no longer applicable.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the information regarding allowable and unallowable costs relating to residential child-care contracts will be clarified. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does

not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed amendments and repeal do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Liz Garbutt at (512) 929-6803 in DFPS's Contract Oversight and Support Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-367, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

SUBCHAPTER A. GENERAL PROCEDURES

40 TAC §732.105

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Government Code §2155.144.

§732.105. Are all contracting procedures and criteria contained in this chapter?

(a) - (b) (No change.)

(c) The determination of allowable and unallowable costs for residential child-care contracts is governed by 1 TAC Chapter 355 (relating to Reimbursement Rates).

(d) [~~(c)~~] The rules of the Health and Human Services Commission do not apply to the following transactions:

(1) the lease, purchase, or lease-purchase of real property;

(2) the award of grants; or

(3) interstate or international agreements executed in accordance with applicable law.

(e) [~~(d)~~] Other rules of this Department provide additional procedures, criteria, and requirements concerning specific types of contracts or specific stages of the contract process. For example, Chapter 700 of this title (relating to Child Protective Services) contains additional procedures, criteria, and requirements concerning contracts for residential child care, and Chapter 730 of this title (relating to Legal Services) contains procedures, criteria, and requirements concerning hearings.

(f) [~~(e)~~] The commissioner [~~Executive Director~~] or designee may adopt policies to guide the Department concerning contracting. The policies may interpret statutes, rules, or contract provisions; however, they do not create any new rights or responsibilities for any client or contractor unless the person agrees in writing. The Department may enforce the policies against employees and any person who has agreed to implement the policies. The commissioner [~~Executive Director~~] or designee may waive policies but may not waive rules.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER L. CONTRACT ADMINISTRATION

40 TAC §§732.240, 732.241, 732.243

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement Government Code §2155.144.

§732.240. What are the general principles of allowable and unallowable costs?

(a) In cost reimbursement contracts, the Department reimburses its contractors only for costs (both direct and indirect) which are allowable, reasonable, necessary, and properly allocated to the specific contract. The cost guidelines, principles, and definitions for allowable and unallowable costs (both direct and indirect) for purposes of preparing budgets, for expenditure purposes, and for cost-reporting purposes are the same. Those guidelines are published in federal and state regulations. Contractors receiving Title IV-E funding on a cost reimbursement basis are required to be in compliance with 45 Code of Federal Regulations (CFR) Part 74 and 48 CFR Part 31 regarding the use and expenditure of Title IV-E funds. Contractors receiving Title IV-B funding on a cost reimbursement basis are required to be in compliance with 45 CFR Part 92 regarding the use and expenditure of Title IV-B funds. All purchased client services contractors (both for-profits and nonprofits) who have cost reimbursement contracts are required to be in compliance with Office of Management and Budget (OMB) Circular A-110 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations) and this section and §§732.242-732.255 [~~§§732.242-732.256~~] of this title (relating to Contract Administration) regarding the guidelines for use and expenditure of funds received from the Department, which consist of federal and/or state revenues. If the contractor is a governmental entity, the contractor shall remain in compliance with OMB Circular A-87 (Cost Principles for State and Local Governments). If the contractor is either a for-profit entity or a nonprofit entity, the contractor is required to be in compliance with OMB Circular A-122 (Cost Principles for Nonprofit Organizations). In the event of any conflict or contradiction between or among the

regulations referenced in this subsection, the regulations shall control in the following order of precedence:

(1) - (2) (No change.)

(3) state regulations - this section, §732.241 of this title (relating to What happens if a cost is not allowable?) and §§732.242-732.255 [~~§§732.242-732.256~~] of this title (relating to Contract Administration); and

(4) (No change.)

(b) - (i) (No change.)

(j) This rule section does not apply to residential child-care contracts because the principles of allowable and unallowable costs for residential child-care contracts are governed by 1 TAC Chapter 355 (relating to Reimbursement Rates).

§732.241. What happens if a cost is not allowable?

[~~(a)~~] The Department regularly reviews bills and monitors or audits contracts. If, at any time, it appears to the Department that a cost claimed for reimbursement pursuant to a cost reimbursement contract is unallowable for any reason (unreasonable, unnecessary, not properly allocated, not in the approved budget, or specifically unallowable), the cost may be questioned and possibly disallowed as provided in other rules in this chapter. If the contractor incurred other legitimate costs pursuant to the contract and budget, or pursuant to the contract and the Department agrees to allow a minor amendment to the budget, the contract amount or payment to the contractor does not need to be decreased. The contractor must provide convincing evidence of these other legitimate costs during the process of the costs being questioned or disallowed. However, the Department may, in its sole discretion, consider such additional costs after the costs have been disallowed and before collection of excess payments.

~~[(b) Residential contract rates are set as an average to assure that costs to the Department are reasonable for federal funding purposes, and it is expected that one-half of the contractors will report individual costs lower than this average. The Department will not expect repayment by residential contractors for costs claimed below the rate or for disallowed costs unless the contractor:]~~

~~[(1) was not entitled to the number of days or level-of-care rates paid because of the contract; or]~~

~~[(2) has breached the contract.]~~

§732.243. Employee Compensation.

(a) (No change.)

(b) A contractor must:

(1) - (4) (No change.)

(5) provide job descriptions when required by the Texas Department of Family and Protective [~~and Regulatory~~] Services (DFPS) [~~(TDPRS)~~] and only hire or promote people who meet job qualifications.

(c) (No change.)

(d) Contractors substantially engaged in activities other than the services for which DFPS [~~TDPRS~~] is contracting must provide compensation for employees engaged in contract services that is comparable to compensation for other comparable contractor activities. The contractor also must provide compensation to employees that is considered reasonable and comparable to the compensation paid for similar work in the labor market in which the contractor competes for the kind of employees involved.

(e) Overtime is allowable as a cost to DFPS [~~TDPRS~~] only under the following conditions:

(1) - (3) (No change.)

(f) (No change.)

(g) Merit raises or other additional compensation reimbursed by DFPS [~~TDPRS~~] and instituted by a contractor must meet the following requirements:

(1) - (2) (No change.)

(h) (No change.)

(i) A contractor may be reimbursed for budget costs incurred by its employees (who are providing services under the contract) for travel including mileage, food, and lodging costs and travel-related expenses in a cost reimbursement contract. However, the budget for the cost reimbursement contract must follow the requirements in §732.239 of this title (relating to Budget Changes), §732.240 of this title (relating to General Principles of Allowable and Unallowable Costs), and §§732.242-732.255 [~~§§732.242-732.256~~] of this title (relating to Contract Administration).

(1) (No change.)

(2) Mileage. Allowable reimbursement for mileage is computed on a per mile rate, not exceeding the current mileage reimbursement rate set by the Texas Legislature for state employee travel. For audit purposes, contractors must keep copies of travel forms that DFPS [~~TDPRS~~] approved in writing. Contractors may reimburse staff at rates in excess of those currently in effect for state employees if the contractor pays the difference. DFPS [~~TDPRS~~] will not pay for the difference in mileage rate.

(3) - (6) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 26, 2007.

TRD-200703242
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: September 9, 2007
For further information, please call: (512) 438-3437

♦ ♦ ♦

40 TAC §732.256

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements Government Code §2155.144.

§732.256. Unallowable Costs.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: September 9, 2007
For further information, please call: (512) 438-3437

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 251. REGIONAL PLANS--STANDARDS

1 TAC §251.6

The Commission on State Emergency Communications (Commission) adopts the repeal of §251.6, concerning guidelines for strategic plans, amendments and allocation of funds as posted in the June 22, 2007, issue of the *Texas Register* (32 TexReg 3773) without changes and will not be republished.

Section 251.6 established a framework for RPCs to use when developing regional strategic plans for provisioning 9-1-1 service. The rule also provided instructions on the allocation of revenue and parameters on funding for ancillary equipment such as voice recorders and pagers, and emergency power equipment, including generators.

At its June 7, 2007 commission meeting, the Commission moved the provisions pertaining to the developing and amending of regional plans from §251.6 into Commission Program Policy Statement 033. The remaining provisions of §251.6, concerning the allocation of revenue, consisted primarily of a citation of applicable provisions from Texas Health and Safety Code Chapter 771. Such provisions are applicable to the Commission irrespective of whether they are incorporated into a rule. Accordingly, §251.6 no longer serves a purpose and the repeal thereof eliminates an obsolete section.

The Commission did not receive any comments on the proposed repeal of §251.6.

The repeal is adopted pursuant to the Texas Health and Safety Code, Chapter 771, §§771.051, 771.071, 771.0711, 771.072, and 771.075; and Texas Administrative Code, Title 1, Part 12, Chapter 251, Regional Plan Standards, which authorize the Commission to plan, develop, fund, administer, approve, and enhance the provisioning and effectiveness of 9-1-1 service.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 27, 2007.

TRD-200703260

Paul Mallett
Executive Director
Commission on State Emergency Communications
Effective date: August 16, 2007
Proposal publication date: June 22, 2007
For further information, please call: (512) 305-6930

♦ ♦ ♦

1 TAC §251.14

The Commission on State Emergency Communications (Commission) adopts amendments to §251.14, concerning general provisions and definitions as posted in the June 22, 2007, issue of the *Texas Register* (32 TexReg 3773) without changes and will not be republished.

Section 251.14 establishes the general provisions for defining terms utilized within the context of Commission rules. This rule allows for compilation of frequently used 9-1-1 industry related terms used in the rulemaking process.

The amendments adopt by reference 9-1-1 related terms and definitions contained within applicable federal and state laws or regulations, Public Utility Commission of Texas rules, and the National Emergency Number Association Master Glossary of 9-1-1 Terminology. Alignment will provide consistency for all definitions and acronyms, and will reduce the work required to establish definitions for terms and acronyms consistently utilized by the 9-1-1 entities in Texas. Terms unique to the statewide 9-1-1 program are retained in the rule.

No comments were received regarding adoption of amendments to §251.14.

Amendments to §251.14 are adopted under Health and Safety Code, Chapter 771, §§771.051, 771.055, 771.056, 771.057, 771.071, 771.072, 771.075, 771.0751, 771.079; which authorize the Commission to plan, develop, fund, and provide provisions for the enhancement of effective and efficient 9-1-1 service. The amendments are proposed in accordance with the process for rulemaking as prescribed by Texas Government Code, Chapter 2001, Subchapter B. No other statutes, articles, or codes are affected by the proposed amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200703259

Paul Mallett
Executive Director
Commission on State Emergency Communications
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Proposal publication date: June 22, 2007
For further information, please call: (512) 305-6930

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE
SUBCHAPTER E. STANDARDS FOR MEDICAID MANAGED CARE

1 TAC §353.421

The Texas Health and Human Services Commission (HHSC) adopts new §353.421, relating to Special Disease Management, without changes to the proposed text as published in the April 27, 2007, issue of the *Texas Register* (32 TexReg 2331) and will not be republished.

Senate Bill (S.B.) 1188, 79th Legislature, Regular Session, 2005, codified at §533.009(f), Government Code, relating to Special Disease Management , requires HHSC to promulgate rules prescribing the minimum requirements Medicaid managed care organizations (MCOs) must meet to be eligible to contract with HHSC to provide disease management services. The proposed rule requires that MCO disease management programs have performance measures that are comparable to those of the Medicaid fee-for-service disease management program, and that the MCOs demonstrate an ability to manage complex diseases among the Medicaid population. Pursuant to House Bill (H.B.) 1252, 79th Legislature, Regular Session, 2005, the new rule also includes requirements for MCOs that provide disease management services for chronic kidney disease and its complications.

HHSC received one comment regarding the proposed rule during the 30-day comment period, which included a public hearing on May 17, 2007. A summary of the comment and HHSC's response follows.

Comment

HHSC received a comment from Fresenius Medical Care North America in which the commenter expressed concern regarding §354.421, subsection (e). The concern was that the MCOs would be conducting screenings or other medical services rather than providers.

HHSC Response

HHSC acknowledges the comment and disagrees with the commenter. MCOs contract with providers to render screenings and other medical services to Medicaid members, so providers will be conducting these services. Therefore, HHSC did not modify the rule to address this comment.

The new rule is adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200703307
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: August 19, 2007
Proposal publication date: April 27, 2007
For further information, please call: (512) 424-6900

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CHAPTER 354. MEDICAID HEALTH SERVICES
SUBCHAPTER A. PURCHASED HEALTH SERVICES
DIVISION 5. PHYSICIAN AND PHYSICIAN ASSISTANT SERVICES

1 TAC §354.1069

The Texas Health and Human Services Commission (HHSC) adopts new §354.1069, Sign Language Interpreter Services, with minor grammatical changes to the proposed text as published in the April 27, 2007, issue of the *Texas Register* (32 TexReg 2334).

The new rule is adopted to comply with House Bill (H.B.) 3235, 79th Legislature, Regular Session, 2005. Subject to the availability of funds, H.B. 3235 requires sign language interpreter services be available to Medicaid recipients who are deaf or hard of hearing, or to a parent or guardian of a person receiving Medicaid, if the parent or guardian is deaf or hard of hearing.

The new rule outlines the benefits and limitations for sign language interpreter services. Physicians in private or group practice with 14 or fewer employees will be eligible for reimbursement for interpreter services. The physician will be responsible for arranging for and paying the sign language interpreter, and the physician will then bill Medicaid to be reimbursed for the service.

HHSC did not receive comments regarding the proposed rule during the 30-day comment period, which included a public hearing on May 24, 2007.

The new rule is adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

§354.1069. Sign Language Interpreter Services.

(a) Definitions. The following words and terms, when used in this chapter, have the following meanings.

(1) Deaf--The term "deaf" is defined in the Human Resources Code, Title 4, Services for the Deaf, Chapter 81, Texas Commission for the Deaf and Hard of Hearing, §81.001, Definitions.

(2) Hard of Hearing--The term "hard of hearing" is defined in the Human Resources Code, Title 4, Services for the Deaf, Chapter

81, Texas Commission for the Deaf and Hard of Hearing, §81.001, Definitions.

(3) Interpreter--An interpreter is an individual who possesses one of the following certification levels (i.e., levels A - H) issued by either the Department of Assistive and Rehabilitative Services, Office for Deaf and Hard of Hearing Services, Board for Evaluation of Interpreters (BEI) or the National Registry of Interpreters for the Deaf (RID):

(A) Certification Level A:

(i) Level I/Ii; and

(ii) OC:B (Oral Certificate: Basic).

(B) Certification Level B:

(i) BEI Basic; and

(ii) RID NIC (National Interpreter Certificate) Certified.

(C) Certification Level C:

(i) BEI Level II/IIi;

(ii) RID CI (Certificate of Interpretation);

(iii) RID CT (Certificate of Transliteration);

(iv) RID IC, (Interpretation Certificate); and

(v) RID TC (Transliteration Certificate).

(D) Certification Level D:

(i) BEI Level III/IIIi;

(ii) BEI OC: C (Oral Certificate: Comprehensive);

(iii) BEI OC: V (Oral Certificate: Visible);

(iv) RID CSC (Comprehensive Skills Certificate);

(v) RID IC/TC (Interpretation Certificate/Transliteration Certificate);

(vi) RID CI/CT (Certificate of Interpretation/Certificate of Transliteration);

(vii) RID RSC (Reverse Skills Certificate); and

(viii) RID CDI (Certified Deaf Interpreter).

(E) Certification Level E:

(i) BEI Advanced; and

(ii) RID NIC Advanced.

(F) Certification Level F:

(i) BEI IV/IVi;

(ii) RID MCSC (Master Comprehensive Skills Certificate); and

(iii) RID SC: L (Specialist Certificate: Legal).

(G) Certification Level G is BEI V/VI.

(H) Certification Level H:

(i) BEI Master; and

(ii) RID NIC Master.

(4) Interpreting Services--The provision of voice-to-sign, sign-to-voice, gestural-to-sign, sign-to-gestural, voice-to-visual, visual-to-voice, sign-to-visual, or visual-to-sign services for communication access provided by a certified interpreter.

(b) Benefit and Limitations. Sign language interpreting services are a health care benefit of the State Medical Assistance (Medicaid) Program.

(1) Sign language interpreting services must be requested by a physician and provided by a qualified interpreter to facilitate communication between:

(A) A client who is deaf or hard of hearing and a physician during the course of a medically necessary medical examination or other medical services; or,

(B) A client's parent or guardian who is deaf or hard of hearing and a physician during the course of the client's medically necessary medical examination or other medical services.

(2) A physician's determination of the need for sign language interpreting services shall give primary consideration to the needs of the individual who is deaf or hard of hearing.

(3) The physician requesting interpreting services must maintain documentation verifying the provision of interpreting services.

(A) Documentation of the service must be included in the patient's medical record and must include the name of the sign language interpreter and the interpreter's certification level.

(B) Documentation must be made available if requested by the Commission or its designee.

(c) Physician requirements for billing of and reimbursement for sign language interpreting services.

(1) Physicians must be enrolled in the Texas Medicaid Program to be considered for reimbursement.

(2) Reimbursement for sign language interpreting services is limited to physicians or physician groups employing fewer than fifteen employees.

(3) Providers seeking reimbursement for sign language interpreting services must provide and bill for the service in the manner prescribed by the Texas Medicaid Program and in accordance with §355.8085 of this title (relating to Texas Medicaid Reimbursement Methodology (TMRM) for Physician and Certain Other Practitioners).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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DIVISION 33. TELEMEDICINE SERVICES

1 TAC §§354.1430, 354.1432, 354.1434

The Texas Health and Human Services Commission (HHSC) adopts amendments to §354.1430, Definitions; §354.1432,

Benefits and Limitations; and §354.1434, Requirements for Telemedicine Providers, without changes to the proposed text as published in the April 27, 2007, issue of the *Texas Register* (32 TexReg 2336) and will not be republished.

These amendments add state schools and state hospitals throughout the state to the list of remote sites where a Medicaid recipient can receive telemedicine services. The amendments also replace the references to "local mental health authorities" with "community centers" to clarify that all community centers contracted with the Department of State Health Services are allowable telemedicine hub sites, and those in rural or underserved areas are allowable remote sites. Lastly, the amendments update language concerning the requirements for release of confidential patient information.

HHSC did not receive comments regarding the proposed rules during the 30-day comment period, which included a public hearing on May 24, 2007.

The amendments are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 3. PHYSICIAN SERVICES

1 TAC §355.8043

The Health and Human Services Commission (HHSC) adopts new §355.8043, Supplemental Payments to Certain Physicians, without changes to the proposed text as published in the May 4, 2007, issue of the *Texas Register* (32 TexReg 2433) and will not be republished.

Section 355.8043 establishes the methodology that HHSC will use to distribute supplemental upper payment limit funds to state-affiliated physician group practices.

HHSC requested approval from the Centers for Medicare and Medicaid Services (CMS) to implement a supplemental payment program to state-affiliated physician group practices through the submission of a State Plan Amendment (SPA) on June 30, 2004. The change in reimbursement practice recognizes the unique role state-affiliated physician group practices play in providing services to Medicaid recipients. As a result of this change in methodology, the State will obtain additional federal revenue for state-owned medical schools that bill Medicaid. The state matching funds required to draw down federal dollars will be provided by the state-owned medical schools. The effective date of this SPA is May 1, 2004.

HHSC did not receive comments regarding the proposed rules during the 30-day comment period.

The new rule is adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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Proposal publication date: May 4, 2007
For further information, please call: (512) 424-6900

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SUBCHAPTER J. PURCHASED HEALTH SERVICES

The Health and Human Services Commission (HHSC) adopts the repeal of §355.8301, concerning Reimbursement and replaces it with new §355.8443 to correspond with the language approved by the Centers for Medicare and Medicaid Services (CMS) in the Texas Medicaid State Plan Amendment (06-005-723) related to covered services and reimbursement methodology for School Health and Related Services (SHARS). The repeal and new rule are adopted without changes to the proposed text as published in the May 11, 2007, issue of the *Texas Register* (32 TexReg 2524) and will not be republished.

Section 355.8443 provides the covered services and reimbursement methodology approved by CMS for school districts effective retroactively to September 1, 2006.

CMS no longer allows school districts, as public entities, to receive reimbursement that is greater than the Medicaid-allowable cost for delivering SHARS. The Health and Human Services Commission (HHSC) has been working with CMS for more than a year to agree upon the covered services and related reimbursement methodology for SHARS. The resulting methodology is contained in §355.8443. Since §355.8301 explained the processes for reimbursement under SHARS, as they existed under the Texas Medicaid State Plan prior to September 1, 2006, HHSC proposed to repeal it and replace it with §355.8443.

HHSC did not receive comments regarding the proposed rule during the 30-day comment period.

DIVISION 16. SCHOOL HEALTH AND RELATED SERVICES

1 TAC §355.8301

The repeal is adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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DIVISION 23. EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT (EPSDT)

1 TAC §355.8443

The new rule is adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) adopts the repeals of the following sections: §26.2, related to Cross-Reference Transition Provision; §26.82, related to Construction Reports; §26.88, related to Traffic Usage Studies; §26.122, related to Customer Proprietary Network Information (CPNI); §26.126, related to Telephone Solicitation; and §26.275, related to IntraLATA Equal Access, pursuant to the commission's conclusions in Project Number 33043, *Review of Chapter 26 Substantive Rules Applicable to Telecommunications Service Providers Pursuant to Texas Government Code*. The repeals of §§26.2, 26.82, 26.88, 26.122, 26.126, and 26.275 are adopted under Project Number 33951. The repeals are adopted with no changes to the proposed text as published in the May 11, 2007, issue of the *Texas Register* (32 TexReg 2526).

The commission received written comments on its proposal for the repeals from Southwestern Bell Telephone, L.P. d/b/a AT&T Texas (AT&T Texas) on June 11, 2007. Reply comments were not received.

Comments of AT&T Texas

AT&T Texas supported the commission's proposal for repeals. AT&T Texas agreed that the commission's determination that §26.2, created for use during the interim between the commission's change from Chapter 23 to Chapter 26, had expired. AT&T Texas also agreed that §26.82 is obsolete and noted that the commission has the authorization to request information from dominant carriers regarding construction projects on an as-needed basis. AT&T Texas also supported the commission's conclusion that §26.88 should be repealed because it has been made obsolete since the Federal Communications Commission froze interstate and intrastate traffic factors in 2001. AT&T Texas further agreed with the commission's conclusion that §26.122 is obsolete as a result of Senate Bill 5's repeal, in 2005, of PURA, Chapter 62, Subchapter B. AT&T Texas concluded that the repeal of PURA, §55.151, and replacement with Texas No-Call Legislation, reflected in §26.37, Texas No-Call List, make §26.126 obsolete. Finally, AT&T Texas agreed that the requirements of §26.275 expired on December 31, 2002.

Commission response

The commission believes that adoption of the repeals of these sections will eliminate unnecessary administrative efforts on its part and that of the affected telecommunications providers, resulting in a substantial savings of time and costs.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §26.2

This repeal is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated, §14.002 (Vernon 2007), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, pursuant to the general requirements of SB 408, Section 13, 79th Legislature, Regular Session (Tex. 2005) regarding the commission's ability to act upon those conclusions that do not require statutory review.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and SB 408, Section 13, 79th Legislature, Regular Session (Tex. 2005).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200703300

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: August 16, 2007
Proposal publication date: May 11, 2007
For further information, please call: (512) 936-7223

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SUBCHAPTER D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION

16 TAC §26.82, §26.88

These repeals are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated, §14.002 (Vernon 2007), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, pursuant to the general requirements of SB 408, Section 13, 79th Legislature, Regular Session (Tex. 2005), regarding the commission's ability to act upon those conclusions that do not require statutory review.

Cross Reference to Statutes: Public Utility Regulatory Act, §14.002 and SB 408, Section 13, 79th Legislature, Regular Session (Tex. 2005).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7223

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SUBCHAPTER F. REGULATION OF TELECOMMUNICATIONS SERVICE

16 TAC §26.122, §26.126

These repeals are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated. §14.002 (Vernon 2007), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, pursuant to the general requirements of SB 408, Section 13, 79th Legislature, Regular Session (Tex. 2005), regarding the commission's ability to act upon those conclusions that do not require statutory review.

Cross Reference to Statutes: Public Utility Regulatory Act, §14.002 and SB 408, Section 13, 79th Legislature, Regular Session (Tex. 2005).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER L. WHOLESALE MARKET PROVISIONS

16 TAC §26.275

This repeal is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated, §14.002 (Vernon 2007), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, pursuant to the general requirements of SB 408, Section 13, 79th Legislature, Regular Session (Tex. 2005), regarding the commission's ability to act upon those conclusions that do not require statutory review.

Cross Reference to Statutes: Public Utility Regulatory Act, §14.002 and SB 408, Section 13, 79th Legislature, Regular Session (Tex. 2005).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 936-7208

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §1.18

The Texas Higher Education Coordinating Board adopts new §1.18 concerning Agency Administration, with changes to the proposed text as published in the June 1, 2007, issue of the *Texas Register* (32 TexReg 2955). Specifically, this new section will provide rules for the operation of the Education Research Centers created by Texas Education Code §1.005. The adopted text adds paragraph (4) under subsection (a) Definitions and paragraph (9) under subsection (d) Operations to the proposed June 1, 2007 text.

The following comments were received regarding the new section:

The following comments were received from The University of Texas at Dallas.

Comment: Regarding subsection (b)(1): The phrase "provide access" is vague in the context of access to the data over secure Virtual Private Network (VPN) connections (for authorized users only, of course). The important issue is that individual level student data must not leave the data center, either while stored on disk as datasets or when loaded into memory for analysis.

Response: TEA and Coordinating Board staff agree that student data should not be accessed at locations outside of the state because of FERPA concerns. However, we will submit a question to the Department of Education concerning VPN access to student level data and may request a change to the rule when the Department of Education provides a ruling.

Comment: Regarding subsection (b)(3): As stated, the commitment to covering costs at two public agencies beyond operation of the Center is open-ended and potentially onerous. A more specific description of the costs for which the ERCs are liable would be more reasonable.

Response: TEA and Coordinating Board staff agreed and changed the language accordingly.

Comment: Regarding subsection (d)(5)(B): The word "independent" implies someone not affiliated with the ERC. However, that could potentially expose confidential data to someone not authorized to view it. We suggest that the wording be clarified to stipulate that the review be conducted by ERC staff person, but someone other than the researcher.

Response: TEA and Coordinating Board staff agreed and clarifying language has been included.

Comment: Regarding subsection (d)(7) This is a stipulation presents an unbounded commitment of resources. The suggested changes below provides for an opportunity for ERC input regarding the expected level of effort for planning purposes.

Response: TEA and Coordinating Board staff disagreed and does not suggest any changes at this time.

Comment: Regarding subsection (f)(2): As in subsection (b)(1), the physical location of access is ambiguous over a VPN. The wording below specifies that the location of the data, not the researchers, is the relevant issue. We also add text to cover secure off-site back up in accordance with standard data management procedures.

Response: TEA and Coordinating Board staff agreed and language has been added to clarify that off-site back up is allowed. As mentioned above, the Department of Education will be asked about allowing out-of-state VPN access to data.

The following comments were received from the Texas Education Agency (TEA):

Comment: Regarding subsection (c)(2): In looking at the proposed rule and our discussions about who would be available to serve on the Joint Advisory Board, I think we would be well served to change the wording in §1.18(c)(2) to authorize the two commissioners to appoint "up to ten" additional members. That would allow the Board to operate with fewer than 12 members should we have difficulty filling the positions without getting into questions about whether a quorum of the members have been named.

Comment: TEA would like to add the rule definitions that of "Coordinating Board" as including "Commissioner of Higher Ed" that appears in the original contract and the ERC contracts. The reason is to be clear that the (higher ed) commissioner could initiate a sanction against a center under subsection (e)(2) and cut off access to data under subsection (f)(1) and (3) without having to wait for the next coordinating board meeting.

Comment: TEA commented that there may be instances in which research projects require data or data manipulation beyond the deliverables in the original contract. We would like to add as subsection (d)(9) the following: "Research projects that require access to data not included in the database maintained by the CB for research may be provided by TEA or the CB in those agencies' discretion. A research center may be charged the cost to acquire, process or manipulate such data."

Response: Coordinating Board staff agreed and language has been changed to match all three TEA comments.

The following comments were received from the Ray Marshall Center:

Comment: The rule is far more restrictive than the Family Educational Rights and Privacy Act (FERPA) provisions and their Federal regulations, especially in light of the fact that the Education Research Centers (ERCs) would likely be operating as "authorized representatives" of the state educational authorities conducting research designed to improve student outcomes at the initiation of these same authorities. In such instances, FERPA allows researchers to gain access to individual student-level records with identifying information, so long as no further redisclosures of such student information are allowed to occur.

Response: TEA and the Coordinating Board disagree with this assessment. However, the RFP, rule, and ERC contract will be forwarded to the Department of Education to request guidance in regard to some of the issues mentioned.

Comment: The Ray Marshall Center commented that the rule also appears to extend CB control over research conducted at an ERC, even research that is not supported by ERC funding. This is inappropriate, very probably illegal, and may well preclude securing the necessary approval from the legal staff of the host Institutions of Higher Education (IHE). If allowed, it creates a major disincentive for IHE researchers to participate as part of an ERC.

Response: The funding is designated as seed funding and as such not designed to fund all the research. Only research that includes confidential student data needs to be approved by the joint advisory board.

Comment: The Ray Marshall Center commented that the rule makes IHEs responsible for supporting both agency and advisory board expenses related to ERC operations, despite the fact that a large share of the funding appropriated by the legislature for first-year operations has already been retained at the state level and not passed down for ERC operations and research. This is troubling and also appears inconsistent with legislative intent. The CB's recent receipt of $2.5 million from the Houston Endowment to create and operate its own in-house education research center raises additional questions about the need for retaining such a large share of ERC-related funds at the state level rather than channeling them into independent, objective research by ERCs.

Response: The language for support has been limited as mentioned above. The CB is not retaining any of the $3 million dollars that was provided by the Legislature, so the center must have

been misinformed. The CB's Houston Endowment funding was requested for specific purposes, not including funding of data for the ERCs.

Comment: The Ray Marshall Center commented that the rule appears to preclude the conduct of most longitudinal research that would rely on linking individual student records to other administrative data (e.g., Unemployment Insurance wage records) through the use of SSNs. There is much to be gained from such research.

Response: There is a provision in which data that an ERC would like to match can be sent to either the TEA or CB and the SSN desensitized so the matching can be done.

Comment: The Ray Marshall Center commented regarding §1.18(b)(1) - This provision appears to suggest a single location from which an ERC may offer access to data, although provision §1.18(f)(2) addressing security issues is explicit that ERCs may provide such access at multiple IHE locations as approved by TEA and CB. Since ERCs are typically entities with multiple partners, it is important to clarify that multiple locations of an ERC may offer data access.

Response: Access to collaborating partners are considered part of the ERC. They will be reviewed for security.

Comment: The Ray Marshall Center commented regarding §1.18(b)(3) - This provision makes the ERCs responsible for centralized TEA, CB and advisory board expenses despite substantial cuts to the substate ERC allocations in the post-award period. This seems unreasonable, especially when the ERCs appear to have little control over the incurring of those expenses, convening of the meetings (see §1.18(c)(4)), travel arrangements, and other important variables. The CB would appear to be in a better position, administratively and fiscally, to handle these expenses in light of the Houston Endowment grant as well as the funds appropriated by the legislature for state-level ERC operations.

Response: Limiting language has been added to the rule. The Coordinating Board was not appropriated any funds by the Legislature in the just concluded session for state-level ERC operations. The Houston Endowment grant was for a specific purpose which did not include support of the ERCs.

Comment: The Ray Marshall Center commented regarding §1.18(c)(2) and §1.18(d)(3) - These provisions inappropriately subject "all research involving access to confidential information" to the approval by the advisory board and oversight by TEA and the CB through the advisory board. Non-ERC-funded research involving confidential data at a research entity that is part of an ERC should not have to be authorized, approved or overseen by the board. Most ERC partners are conducting such research now with funding from federal, state and local agencies as well as foundations. Non-ERC-funded research lies outside the purview of the ERC process. These provisions should be struck from the proposed rule.

Response: The funding is designated as seed funding and as such not designed to fund all the research. Only research that includes confidential student data needs to be approved by the joint advisory board.

Comment: The Ray Marshall Center commented regarding §1.18(d)(4) - Despite the preceding provision §1.18(d)(3) indicating that "confidential data" will be used in ERC research, this provision essentially eliminates access to any and all data elements that could be considered confidential. This provision also states that "under no circumstances may social security numbers, names, or birthdates be accessed for the purpose of research at an ERC." This would appear to preclude the conduct of research--e.g., the ongoing Central Texas High School Data Center at the Ray Marshall Center with Skillpoint Alliance--in which the researchers either have explicit student or parental consent to access and use such information or have a "study exception" granted by the participating Independent School Districts to do so. There are clearly some circumstances under which such information may be accessed under FERPA and currently approved IRB protocols at the IHEs. Unless this provision is revised accordingly, such research will likely be conducted outside of the ERCs with numerous requests going directly to TEA and CB for these data. Again, this arrangement appears inconsistent with legislative intent.

Response: There is a provision in which data that an ERC would like to match can be sent to either the TEA or CB and the SSN desensitized so the matching can be done.

Comment: The Ray Marshall Center commented regarding §1.18(d)(6) - This provision also pertains to "all research produced at an ERC"--even non-ERC-funded research--indicating that, among other things, it must be made available upon request to TEA and CB, be available for public distribution, copying or reproduction at no cost to TEA or CB, contain a disclaimer acceptable to TEA and CB, and be reviewed before publication or distribution by individuals other than those conducting the research, in accordance with guidelines adopted under FERPA or by TEA or CB. This provision places an undue burden for review/approval on any and all research conducted, particularly work that is not ERC-supported or ERC-related. This provision also should be struck.

Response: The funding is designated as seed funding and as such not designed to fund all the research. Only research that includes confidential student data needs to be approved by the joint advisory board.

The new sections are adopted under the Texas Education Code, §61.027, which gives the Coordinating Board the authority to adopt rules.

§1.18. Operation of Education Research Centers.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) FERPA means the Family Educational Rights and Privacy Act, 42 U.S.C. 1232g, including regulations and informal written guidance issued by the United States Department of Education and any amendments or supplementation thereof.

(2) Confidential information as applied to data provided to an Education Research Center (ERC) by Texas Education Agency (TEA) or the Texas Higher Education Coordinating Board (CB) includes all student-level data, including any data cells small enough to allow identification of an individual student. All social security numbers, student names, student birthdates and data cells containing between one and four students, inclusive, are confidential.

(3) Small data cells will be considered any cell containing between one and four students inclusive. Information may not be disclosed where small data cells can be determined through subtraction or other simple mathematical manipulations or subsequent cross-tabulation of the same data with other variables. Institutions may use any of the common methods for masking including:

(A) hiding the small cell and the next larger cell on the row and column so the size of the small cell can not be determined; or

(B) hiding the small cell and displaying the total for both the row and column as a range of at least ten; or

(C) any methodology approved by the TEA and CB.

(4) References to the CB shall also be deemed to include the Commissioner of Higher Education. References to the TEA shall also be deemed to include the Commissioner of Education.

(b) Purpose.

(1) ERCs may be established by joint approval of the commissioner of education and the CB. An ERC may only be established at a sponsoring public institution of higher education in Texas, but may be awarded to a consortium of such institutions. An ERC must be physically located within Texas and must retain all data at that location, except for secure off-site data back-up in accordance with written procedures approved by the Joint Advisory Board. Student level data may not be provided to a researcher at a location other than a Research Center or the THECB or a public institution of higher education located in Texas that is an acknowledged consortium member of the Research Center.

(2) The CB is responsible for general oversight, technical assistance and state support of ERCs, except as otherwise provided in this chapter. All policy decisions and rulemaking shall be jointly approved by TEA and the CB.

(3) Sponsoring institutions of higher education are responsible for all equipment, salaries and other operating costs of an ERC, including staff and equipment at TEA and the CB necessary to prepare and maintain data for the ERCs, as well as reasonable reimbursable expenses of the joint advisory board. Costs will be limited to one full-time equivalent employee at each agency along with associated data storage costs as set by DIR for the data center consolidation rates unless otherwise agreed to by the TEA, CB, and the ERCs.

(c) Joint Advisory Board.

(1) The commissioner of education and the commissioner of higher education shall co-chair an advisory board to review and approve research involving access to confidential information and to adopt policies governing ERC operations. Each commissioner may delegate to an agency employee the ability to act as co-chair and vote on matters coming before the Joint Advisory Board.

(2) The commissioner of education and the commissioner of higher education shall jointly appoint up to ten additional members to the Joint Advisory Board. All research involving access to confidential information must be approved by the said board.

(3) Members of the Joint Advisory Board serve at the pleasure of the commissioner of education and the commissioner of higher education and must be reappointed annually. The Joint Advisory Board will post its agenda and conduct its meetings in compliance with the Texas Open Meetings Act.

(4) The Joint Advisory Board shall meet at the call of the two chairs at least twice each year.

(d) Operation.

(1) An ERC may operate only under written authorization by the commissioner of education and the CB. Status as an ERC may not be assigned, delegated or transferred to any other entity.

(2) An ERC shall be lead by a managing director who is a professional employee of the sponsoring institution of higher education (IHE). The managing director shall report directly to the chief operating officer of the sponsoring IHE unless a different reporting structure is approved by TEA and the CB.

(3) All research at an ERC involving access to confidential information shall be conducted only with the approval of and under the joint oversight of TEA and the CB through the Joint Advisory Board. Research that does not involve access to confidential information may be conducted by the ERCs without approval of the Joint Advisory Board upon 30 days notice to TEA and the CB and certification by the ERC that sufficient resources will be available to meet all demands for resources to conduct research or manipulate data under the direction of the Joint Advisory Board or on behalf of TEA or the CB.

(4) Confidential information provided to an ERC by TEA or the CB shall be protected by procedures to ensure that any unique identifying number is not traceable to any individual. Such procedures must be maintained as confidential by TEA and the CB and may not be shared with an ERC, or used for any other purpose. Under no circumstances may social security numbers, names, or birthdates be accessed for the purpose of research at an ERC.

(5) ERCs shall adopt written procedures for research conducted using confidential information, subject to approval by the Joint Advisory Board. An ERC may not access confidential information until all such procedures are approved. Such procedures shall include:

(A) measures to ensure against unauthorized disclosure of confidential information;

(B) independent review of all research products by a designated ERC staff person not involved in that specific project to ensure against unauthorized disclosure of confidential information;

(C) review of all datasets created by a researcher to ensure that confidential information is not copied or removed from the ERC;

(D) annual certification of full compliance with all requirements of state and federal laws and regulations regarding the use of confidential information for research purposes by the internal auditor of each participating IHE;

(E) approval of research design by an accredited IHE, including any applicable requirements for research involving human subjects, before submitting a research proposal to the Joint Advisory Board for approval; and

(F) criteria for allocating research access capacity for researchers not affiliated with the sponsoring IHEs.

(6) All research produced at an ERC shall:

(A) be made available upon request to TEA and the CB;

(B) be available for public distribution, copying or reproduction at no cost to TEA or the CB;

(C) contain a disclaimer in a form acceptable to TEA and the CB stating that the conclusions of the research do not necessarily reflect the opinion or official position of those entities or of the State of Texas;

(D) be reviewed before publication or other distribution by individuals other than those conducting the research to ensure that confidential information is not disclosed, in accordance with guidelines adopted under FERPA or by TEA or the CB;

(7) An ERC shall comply with the requirements of the Texas Public Information Act, including requirements relating to data manipulation. An ERC shall process any Public Information Act requests referred by TEA or the CB in a timely manner. Charges for processing Public Information Act requests shall be based on

guidelines developed by the Texas Attorney General's Office and approved by the Joint Advisory Board.

(8) A sponsoring IHE shall cooperate fully with all audit requests made by TEA or the CB. Each ERC shall annually request and undergo a security audit performed by the Texas Department of Information Resources, or a contractor approved by that Department, which shall include a penetration test of computer equipment and access.

(9) Research projects that require access to data not then included in the database maintained by the CB for research will be provided by the CB or the TEA if available. An ERC will be charged the cost to process or manipulate such data. ERCs will be assessed for annual maintenance costs of the CB and the TEA as approved by the Joint Advisory Board.

(e) Sanctions and Termination.

(1) Upon a determination that confidential information has been released or has been copied to another location, or that appropriate security measures are not in place to protect confidential information, the Joint Advisory Board may require an ERC to obtain appropriate services or equipment or to remove confidential information from such other location in order to remedy a security deficit. Such services or equipment shall be purchased by the ERC from vendors subject to approval of the Joint Advisory Board.

(2) An ERC may be terminated by joint action of TEA and the CB for failure to meet the requirements of state or federal law, of this subchapter, or of the terms of a contract establishing the ERC. Except as provided by subsection (c), an ERC shall be entitled to an informal review of a determination to terminate its status by a designee of the commissioner of education and the commissioner of higher education prior to the effective date of the termination.

(3) Notice of termination under subsection (a) and (b) of this section shall be provided to the ERC's designated representative and shall contain information regarding the reasons for the termination.

(4) A termination made pursuant to this section shall become final and binding unless, within 30 days of its receipt of the notice of termination, the ERC invokes the administrative remedies contained in Chapter 1, subchapter B of the Rules of the CB (relating to Hearings and Appeals).

(5) Any ultimate recommendation regarding termination shall be made to both the CB and the commissioner of education. The CB and the commissioner of education must concur for any termination of an ERC invoking such administrative remedies to become final.

(f) Security.

(1) An ERC must comply with all requirements of FERPA in accessing confidential information to conduct research. Notwithstanding any other provision in this subchapter, failure to maintain adequate security to avoid the unauthorized disclosure of confidential information provided to the ERC shall be grounds for immediate termination of the authorization to access such data.

(2) All physical locations at which confidential information may be accessed at an ERC must be located within Texas, at a sponsoring IHE, and approved by both TEA and the CB. Each ERC may provide for off-site data back up of information for disaster recovery purposes in accordance with DIR processes. No research can be performed at a back up site.

(3) Either TEA or the CB may suspend access to confidential information provided to an ERC based on a significant risk of unauthorized disclosure of confidential information.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER D. DUAL CREDIT PARTNERSHIPS BETWEEN SECONDARY SCHOOLS AND TEXAS PUBLIC COLLEGES

19 TAC §4.85

The Texas Higher Education Coordinating Board adopts amendments to §4.85, concerning Dual Credit Requirements without changes to proposed text as published in the June 1, 2007, issue of the *Texas Register* (32 TexReg 2957). Specifically, these amendments allow the use of the PLAN to determine readiness for dual credit enrollment in the junior year of high school.

There were no comments received regarding the amendments.

The amendment is adopted under the Texas Education Code, §§29.182, 29.184, 61.027, 61.076(J), 130.001(b)(3) - (4), 130.008, 130.090, and 135.06(d), which provides the Coordinating Board with the authority to regulate dual credit partnerships between public two-year associate degree-granting institution and public universities with secondary schools.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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CHAPTER 13. FINANCIAL PLANNING

SUBCHAPTER K. TECHNOLOGY WORKFORCE DEVELOPMENT GRANT PROGRAM

19 TAC §13.193

The Texas Higher Education Coordinating Board adopts an amendment to §13.193, concerning the periodicity and frequency of new request for proposals it issues for the Technology Workforce Development (TWD) Grant Program without changes to the proposed text as published in the June 1, 2007, issue of the *Texas Register* (32 TexReg 2957). Specifically, this amendment will allow the Coordinating Board to be flexible and issue requests for proposals when federal money becomes available for a new cycle of grants.

There were no comments received regarding this amendment.

The amendment is adopted under the Texas Education Code, §51.857 which gives the Coordinating Board the authority to administer a peer-review grants competition for the Technology Workforce Development Grant Program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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CHAPTER 17. CAMPUS PLANNING
SUBCHAPTER D. RULES APPLYING TO NEW CONSTRUCTION AND ADDITION PROJECTS

19 TAC §17.30

The Texas Higher Education Coordinating Board (THECB) adopts amendments to §17.30(2)(B), concerning Campus Planning, with changes to the proposed text as published in the June 1, 2007, issue of the *Texas Register* (32 TexReg 2958).

Specifically, the amendment will apply current and applicable industry costs standards for facility projects. The adopted text adds "as published periodically by Coordinating Board" to the June 1, 2007 proposed text.

The following comments were received regarding the amendments:

Comment: A comment was received from The University of Texas at Austin regarding the change to cost based on industry standards. The comment was that in evaluating the proposed change, it would be helpful to have an understanding of the THECB definition of industry standard. Has a definition of this term been adopted?

Response: Board is planning on utilizing Engineering News Record (ENR), and the proposed wording change will still allow the ability to use RS Means. Current rules limit us to RS Means.

Comment: A comment was received from Texas A&M University-Kingsville (TAMU-Kingsville) regarding the change to cost based on industry standards. TAMU-Kingsville would be in favor of using a different "industry standard", if in fact it is a recognized "industry standard." RS Means is a recognized standard, and even if one doesn't care for the database, it is better than none at all. What is compiled at the system level is probably fine, but it lacks the number and size of numerous projects that a commercial database has. Texas Department of Transportation has their own statewide database for road construction, so if the institutions within Texas combined resources, that would give us a good database to use. The database would just have to be maintained and made available to all users. Otherwise, just saying "based on industry standard," could mean just about anything and the Coordinating Board would have to begin its own dictionary you call a standard for us to follow. That is probably not desirable or necessary.

Response: Board is planning on utilizing Engineering News Record (ENR) and the proposed wording change will still allow the ability to use RS Means. At some future date, a statewide database of the institutions within Texas might be a viable option.

The amendments are adopted under the Texas Education Code, §61.027 and §61.058.

§17.30. Standards for New Construction and/or Addition Projects.

To obtain Board approval for a new construction and/or addition project, an institution shall demonstrate that the project complies with the following standards:

(1) Institutional Standards. The institution shall demonstrate that a new construction and/or addition project complies with the following institutional standards:

(A) Deferred Maintenance.

(i) The Board standard for deferred maintenance shall be the ratio of campus deferred maintenance costs to replacement value of 5 percent or less.

(ii) If the ratio of campus deferred maintenance costs to replacement value is more than 5 percent, a project may be approved if the institution demonstrates that:

(I) the project is intended to reduce the deferred maintenance on the campus, or

(II) the institution has demonstrated a reduction in its deferred maintenance to replacement value ratio 10 percent or more for the immediate prior three years.

(iii) Alternatively, if the deferred maintenance to replacement value ratio is greater than 5 percent, a project may be approved if the institution:

(I) submits a written plan on a form specified by the Board for substantial progress toward meeting the standard; and

(II) provides the Board with a statement signed by the president of the institution, regarding its ability to support and maintain the proposed facility while continuing to address current institutional facility maintenance needs. The president of the institution may not delegate this authority.

(B) Critical Deferred Maintenance.

(i) The Board standard for critical deferred maintenance is zero.

(ii) If the critical deferred maintenance is greater than zero, a project may be approved if the institution:

(I) Develops an acceptable plan in place to address any critical deferred maintenance reported on the master plan; and

(II) the institution shall demonstrate progress towards meeting the plan goals; and

(III) the institution shall provide the Board with a statement signed by the president of the institution regarding its ability to support and maintain the proposed facility while continuing to address current institutional facility maintenance needs. The president of the institution may not delegate this authority.

(2) Project Standards. The institution shall demonstrate that a new construction or addition project complies with the following project standards:

(A) Space Need--The project shall not create a campus space surplus, or add to an existing surplus, as determined by the Board's space projection model report, required by §17.100 of this title (relating to Board Reports).

(i) If the institution has a predicted surplus of space in the current Space Projection Model report and the project is required to accommodate future predicted enrollment growth, the Board may consider a written plan from the institution, on a form specified by the Board, for substantial progress toward meeting the standard. The plan must include:

(I) an explanation of the expected growth and how the predicted growth will impact the institution;

(II) a demonstration of progress towards eliminating the surplus;

(III) a statement regarding the ability of the institution to support and maintain the proposed facility while continuing to address current institutional facility needs; and

(IV) a demonstration that, upon completion of the project, the institution will comply with the Board standard and eliminate the space surplus.

(V) The plan shall be signed by the president of the institution. The president of the institution may not delegate this authority within the requesting institution.

(ii) If more than one project is submitted for an agenda, all projects submitted for the current agenda will be considered in the determination of a campus surplus or deficit.

(B) Cost--The construction building cost per gross square foot shall be within the range of similar projects approved by the Board within the last five years, adjusted for inflation as described in the board's Construction Cost report (§17.100 of this title relating to Board Reports). If the construction cost per gross square foot exceeds the maximum cost of similarly approved projects, the cost per gross square foot shall not exceed the highest actual construction cost per gross square foot based on industry standards as published periodically by the Coordinating Board unless the institution can demonstrate that the higher cost is due to market conditions or other circumstances that warrant the higher cost.

(C) Efficiency--The ratio of NASF to GSF for the space in projects for classrooms and general purpose facilities shall be 0.60 or greater. Where the following specialized space is predominant in the project, the ratios of NASF to GSF shall be as follows:

(i) Office space: 0.65 or greater;

(ii) Clinical facility; 0.50 or greater;

(iii) Diagnostic support laboratories: 0.50 or greater; and

(iv) Technical research buildings: 0.50 or greater; and

(v) Parking structure:

(I) 400 Square Feet per parking space for automobile facilities;

(II) 500 Square Feet per parking space for boathouses; and

(III) 3,000 Square Feet per parking space for airplanes.

(IV) If the parking structure does not meet this standard, the project may be approved if the institution demonstrates that the lower efficiency is due to the shape of the available land or site or other conditions that warrant the lower efficiency.

(vi) For mixed-use facilities, the ratio of NASF to GSF shall be calculated for each space type and considered separately.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bill Franz
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Texas Higher Education Coordinating Board
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SUBCHAPTER K. REPORTS

19 TAC §17.101

The Texas Higher Education Coordinating Board adopts amendments to §17.101(3)(A), concerning Campus Planning, with changes to the proposed text as published in the June 1, 2007, issue of the *Texas Register* (32 TexReg 2958).

Specifically, these amendments provide an annual uniform reporting date for the status of all approved facility projects until completion. The section is adopted with changes to correct grammatical errors that were in the proposed text.

The following comments were received regarding the amendments:

Comment: A comment was received from Texas Tech University System regarding the November 1 date selection for reporting the status of approved projects. It was requested that the date for the annual report on approved projects be the same as the MP1 report date which is July 1.

Response: Board does not recommend the July 1 date. The date for reporting the status of approved projects needs to correlate with the facilities inventory and space model reporting timeline.

Comment: A comment was received from Texas A&M University-Kingsville regarding the reporting timelines. The comment was why July 1, October 15, or any others; and how do these dates relate to state reporting requirements? If everyone has a solid understanding of not only what has to be reported, but how

a missed deadline affects others down the line, people could be a bit more objective and rational. The "why's" are important.

Response: Board agrees that institutions need to know how certain reporting dates affect our ability to respond to request from the Legislature and statutory requirements. The date for reporting the status of approved projects needs to correlate with the facilities inventory and space model reporting timeline of November 1.

The amendments are adopted under the Texas Education Code, §§61.027, 61.058, and 61.0583.

§17.101. Institutional Reports.

Institutions of higher education shall submit current data to the Board for the following reports:

(1) Facilities Inventory.

(A) Periodic Review. Institutions shall report a record of all property, buildings, and rooms occupied or in the control of an institution in a format specified by the Board.

(i) The inventory of facilities shall be updated on an ongoing basis.

(ii) The inventory is subject to periodic audits.

(iii) The inventory shall be certified by the institution annually on or before November 1, or as specified by the Board.

(B) Use. The Board shall use the data reported in the facilities inventory to evaluate project applications, perform facilities audits, to determine compliance with Board Standards, and other required or requested analyses. The facilities inventory shall be used to complete the following reports as required by this section:

(i) the Space Projection Model;

(ii) calculation of replacement values; and

(iii) calculation of classroom and class lab utilization.

(2) Facilities Development Reports. The Board shall consider projects that are included in the facilities development plans (MP1 and MP2). A project that is not included in the plan may be considered if the Board determines that the institution, even with careful planning, could not reasonably have foreseen the project need.

(A) Facilities Development Plan (MP1). On or before July 1 of every year, beginning in 2004, an institution shall submit an update to its Facilities Development Plan (MP1) on file with the Board, as required by Texas Education Code, §61.0582. In every even-numbered year, the Board shall provide Facilities Development Plan data to the Bond Review Board for inclusion in the Capital Expenditure Report. This report may include capital renewal and deferred maintenance projects. The data may be used by the Board to respond to legislative requests, predictions of future space need, and similar analyses. The report shall include projects that are planned or may be submitted to the Board within the next five years, regardless of funding source:

(i) new construction projects $1,000,000 or more;

(ii) repair and rehabilitation projects $1,000,000 or more;

(iii) information resource projects that cumulatively would total $1,000,000 or more in one year;

(iv) property purchases that cumulatively would total $1,000,000 or more in one year. (The actual property address or location for individual property acquisitions may be, but are not required to be, identified in a single proposed project entitled "property acquisitions" with a total cost of all purchases or acquisitions projected over the reporting period.)

(v) the funding source for any planned project identified in clauses (i), (ii), (iii), and (iv) of this subparagraph; and

(vi) a description of the proposals the institution plans to submit to the Board during the reporting period.

(B) Campus Deferred Maintenance Plan (MP2). On or before October 15 of every year, an institution shall submit an update to its Campus Deferred Maintenance Plan (MP2) on file with the Board. This report does not include capital renewal projects. The report shall include:

(i) a list of an institution's facilities backlogged or deferred maintenance needs for the next five years that cost $10,000 or greater;

(ii) the amount the institution plans to designate each fiscal year for the next five years to address the backlogged or deferred maintenance reported in the Campus Deferred Maintenance Plan;

(iii) the amount of an institution's facilities critical backlogged or deferred maintenance needs for the next five years that cost $10,000 or greater;

(iv) a plan to address deferred maintenance if a project is delayed three years beyond its originally scheduled completion date; and

(v) an explanation for the delay in a project and a plan to address deferred maintenance if a project has remained on the institution's MP2 report for a third year.

(C) Campus Addressed Deferred Maintenance Report (MP4). On or before October 15 of every year, an institution shall submit an update to its Campus Addressed Deferred Maintenance Report (MP4) on file with the Board. The report shall include the amount of backlogged or deferred maintenance addressed in previous fiscal year.

(3) Project Status and Tracking Reports

(A) Annually, on or before November 1, institutions shall report the status of all approved projects to the Board. Reporting to the Board on an annual basis shall cease after the construction project is placed into service and included in the Facilities Inventory Report, or the property acquisition is completed, or the renovation shall be reported to be complete. The report shall include, but is not limited to:

(i) approved and actual project cost;

(ii) approved and actual building cost;

(iii) approved and actual GSF;

(iv) approved and actual NASF;

(v) approved and actual E&G NASF;

(vi) approved and actual source(s) of funding; and

(B) If the actual costs, square footage, or source(s) of funding changed beyond the thresholds defined in §17.14 of this title (relating to Re-approval of Projects), the institution shall submit a project application requesting re-approval of the project and include a justification for the delay in the request.

(4) Governing Board Approved Projects. Institutions shall report to the Board annually, on a form specified by the Board, all

projects approved by the institution's governing board but not requiring Board approval that add E&G space to the institution's facilities inventory. The report shall be submitted electronically not later than December 1 of each year.

(5) Other Reports. Institutions are required to submit such other reports required by the Board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bill Franz
General Counsel
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CHAPTER 21. STUDENT SERVICES
SUBCHAPTER C. HINSON-HAZLEWOOD COLLEGE STUDENT LOAN PROGRAM

19 TAC §21.55

The Texas Higher Education Coordinating Board adopts amendments to §21.55 concerning the Hinson-Hazlewood College Student Loan Program, without changes to the proposed text as published in the June 1, 2007, issue of the *Texas Register* (32 TexReg 2959). Specifically, the proposed amendments would remove the requirement, for the College Access Loan (CAL) Program, that cosigner signatures be notarized and would clarify that cosigners must receive a favorable credit report evaluation to qualify as eligible cosigners.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §§52.31 - 52.40, which provides the Coordinating Board with the authority to establish procedures to administer the Hinson-Hazlewood College Student Loan Program and Texas Education Code, §52.31, which provides the Coordinating Board with the authority to adopt rules to effectuate the provisions of Texas Education Code, Chapter 52.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bill Franz
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SUBCHAPTER M. TEXAS COLLEGE WORK-STUDY PROGRAM

19 TAC §21.402, §21.404

The Texas Higher Education Coordinating Board adopts amendments to §21.402 and §21.404 concerning the Texas College Work-Study Program, without changes to the proposed text as published in the June 1, 2007, issue of the *Texas Register* (32 TexReg 2960). All amendments would delete references to the Work-Study Mentorship Program. Rules for the mentorship program will be adopted in new sections of Board rules. Specifically, amendments to §21.402 remove definitions of "Junior," "Mentor," and "Senior"--terms relevant only to the mentorship program and not necessary for the general work-study program and include renumbering the remaining definitions. In addition, amendments to the definition of "Resident of Texas" reflect that Senate Bill 1528, 79th Texas Legislature, Regular Session, enacted Texas Education Code, §§54.0501 - 54.075, establishing new provisions to determine if a person is a Texas resident for tuition purposes at institutions of higher education. The new sections were applied beginning with enrollments for the Fall Semester 2006. Amendments to §21.404 remove language that defines the eligibility requirements for students employed through the mentorship program.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §56.077 which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, Chapter 56, Subchapter E.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bill Franz
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19 TAC §§21.405 - 21.411

The Texas Higher Education Coordinating Board adopts the repeal of §§21.405 - 21.411 concerning the Texas College Work-Study Program, without changes to the proposed text as published in the June 1, 2007, issue of the *Texas Register* (32 TexReg 2960). Specifically, the repeal of §§21.405 - 21.411 would delete references to the Work-Study Mentorship Program from Board rules. Rules for the mentorship program will be adopted in new sections of Board rules.

No comments were received regarding the repeal.

The repeal is adopted under the Texas Education Code, §56.077 which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, Chapter 56, Subchapter E.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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19 TAC §§21.405 - 21.409

The Texas Higher Education Coordinating Board adopts new §§21.405 - 21.409 concerning the Texas College Work-Study Program, without changes to the proposed text as published in the June 1, 2007, issue of the *Texas Register* (32 TexReg 2961). Specifically, the new sections are a result of deleting sections that reference the Work-Study Mentorship Program. Rules for the mentorship program will be adopted in new sections of Board rules. New §21.405 describes requirements of eligible employers and removes language that defines eligible employers for the mentorship program. New §21.406 describes award amounts and uses and removes language that describes the use of funds for the mentorship program. New §21.407 describes the procedure whereby work-study funds are to be allocated and disbursed to institutions. New §21.408 describes how information and rules about the program are to be disseminated. New §21.409 describes under what circumstances institutions may transfer funds among programs.

No comments were received regarding the new sections.

The new sections are adopted under the Texas Education Code, §56.077 which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, Chapter 56, Subchapter E.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER X. DETERMINATION OF RESIDENT STATUS AND WAIVER PROGRAMS FOR CERTAIN NONRESIDENT PERSONS

19 TAC §21.735

The Texas Higher Education Coordinating Board adopts amendments to §21.735(5)(B)(ii), concerning Waiver Programs for Certain Nonresident Persons, without changes to the proposed text as published in the June 1, 2007, issue of the *Texas Register* (32 TexReg 2962). Specifically, the amendment will remove the stipulation that the higher education institution must have a surplus of space above the amount of predicted space calculated by the latest space projection model.

The following comments were received regarding the amendments:

Comment: A comment was received from The University of Texas of the Permian Basin supporting the rule change. UT Permian Basin believes that the proposed changes in the rules will offer opportunities to students who live near the Permian Basin while providing needed students to universities who enroll a small, but significant number of students from New Mexico.

Response: Board appreciates the institution's comment.

Comment: A comment was received from The University of Texas at Tyler supporting the rule change. UT Tyler believes this will restore its ability to recruit a limited number of high ability students from Louisiana to the Tyler area and keep them after graduation.

Response: Board appreciates the institution's comment.

Comment: A comment from The University of Texas-Pan American suggested that the waiver be good for five years as opposed to two years.

Response: Board does not agree to the five years because of changes in funding and legislative actions that occur every two years may impact the decisions of the institutions' Board of Regents and the Commissioner. The rules allow students who when admitted get this waiver to continue to receive it even if the waiver is stopped for new students admitted.

The amendments are adopted under the Texas Education Code, §54.00601, which provides the Coordinating Board with the authority to establish rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER CC. EARLY HIGH SCHOOL GRADUATION SCHOLARSHIP PROGRAM

19 TAC §21.953, §21.956

The Texas Higher Education Coordinating Board adopts amendments to §21.953 and §21.956 concerning the Early High School Graduation Scholarship Program, with changes to the proposed text as published in the June 15, 2007, issue of the *Texas Register* (32 TexReg 3438). The amendments are based on House Bill 2383, which was passed by the 80th Texas Legislature and changed the eligibility for scholarships for

students graduating on or after September 1, 2007, the effective date of the bill. Specifically, the amendment to §21.953(b) indicates the provisions of that paragraph only apply to students graduating between September 1, 2005, and August 31, 2007. The amendments to §21.953(c) indicate that although they must meet other program requirements, students who graduate on or after September 1, 2007: (1) do not have to be Texas residents at the time they use their awards but must be United States citizens or otherwise lawfully authorized to be present in the United States, (2) must complete the majority (not all) of their high school attendance in Texas, and (3) if they graduate in more than 41 months, they may receive scholarships if they graduate in less than 46 (not 45) months. The amendments to §21.956 clarify that the award amount that can be received by a student graduating in more than 41 but less than 46 months will equal $1,000 if the student meets other program eligibility requirements.

The following comments were received regarding the amendments:

Comment: Carol McDonald, President of Independent Colleges and Universities of Texas, Inc., commented that §21.953(c) describes the requirements students must meet to gain access to the program. Although the section does require that the student "have attended one or more high school in Texas," it does not require the student to graduate from a Texas high school. She thought that students who "attended one or more high schools in Texas" but actually graduated from a high school in another state might use this oversight to gain access to the benefits of this program.

Response: The Coordinating Board agreed and §21.953(c)(4) has been amended to include the requirement of graduating from high school in Texas.

The amendments are adopted under the Texas Education Code, §56.209, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, Chapter 56, Subchapter K, relating to the Early High School Graduation Scholarship Program.

§21.953. Eligible Students.

(a) To receive an award through the Early High School Graduation Scholarship Program, a student who graduated from high school before September 1, 2005 must:

(1) be a resident of Texas; and

(2) have completed the requirements for a high school diploma in not more than thirty-six consecutive months having completed all years of high school in Texas.

(b) To receive an award through the Early High School Graduation Scholarship Program, a student who graduated from high school on or after September 1, 2005, but prior to September 1, 2007, must:

(1) be a resident of Texas;

(2) have attended high school exclusively in one or more public high schools in this state;

(3) have successfully completed the Recommended or Distinguished Achievement Program-Advanced High School Program established under Texas Education Code, §28.025, unless the principal or other authorized representative of the student's high school provides a written explanation along with the student's transcript and exemption program application that the courses in the Recommended or Advanced High School Program which the student did not complete were unavailable to the student at the appropriate time in his or her high school career because of:

(A) shortage of qualified teachers;

(B) lack of enrollment capacity; or

(C) another cause not within the person's control, an explanation for which is provided on the transcript by the official;

(4) have graduated:

(A) in not more than 41 consecutive months; or

(B) in not more than 45 consecutive months, if the student graduated with at least 30 hours of college credit.

(c) To receive an award through the Early High School Graduation Scholarship Program, a student who graduated from high school on or after September 1, 2007, must:

(1) be a citizen of the United States or otherwise lawfully authorized to be present in the United States;

(2) have attended one or more public high schools in Texas for the majority of time the person attended high school;

(3) have successfully completed the Recommended or Distinguished Achievement Program-Advanced High School Program established under Texas Education Code, §28.025, unless the principal or other authorized representative of the student's high school provides a written explanation along with the student's transcript and exemption program application that the courses in the Recommended or Advanced High School Program which the student did not complete were unavailable to the student at the appropriate time in his or her high school career because of:

(A) shortage of qualified teachers;

(B) lack of enrollment capacity; or

(C) another cause not within the person's control, an explanation for which is provided on the transcript by the official;

(4) have graduated from a public high school in Texas:

(A) in not more than 41 consecutive months; or

(B) in not more than 46 consecutive months, if the student graduated with at least 30 hours of college credit.

(d) A student's eligibility to receive a tuition credit under the Early High School Graduation Scholarship Program begins with the first regular semester or term following the student's graduation, exclusive of summer sessions that immediately follow the student's graduation. A student's eligibility to receive a tuition credit under the program ends six years after it begins, unless the student seeks and is granted an extension under §21.960 of this title (relating to Hardship Extensions).

§21.956. Award Amounts and Processing Cycle.

(a) Amounts for students graduating prior to September 1, 2005.

(1) The aggregate amount of state credit that shall be awarded to a student through this program may not exceed $1,000 to be applied only toward tuition.

(2) A student who is attending a private or independent institution may not receive a greater state tuition credit in any enrollment period than the amount of institutional aid that is provided by the institution and credited in the same manner, during that enrollment period.

(3) If a state credit awarded through the Early High School Graduation Scholarship Program is more than the amount of the stu-

dent's first semester's tuition, the balance of the student's award may be used in subsequent semesters.

(4) State credits may not be used for continuing education classes that do not receive formula funding.

(b) For students who graduate on or after September 1, 2005:

(1) the aggregate amount of state credit that may be awarded to a student through this program is:

(A) $2,000 to apply toward tuition and mandatory fees if the student completed the Recommended or Distinguished Achievement Program-Advanced High School Program and graduated from high school in 36 consecutive months or less and an additional $1,000 if the person graduated with at least 15 hours of college credit; or

(B) $500 to apply toward tuition and mandatory fees if the student completed the Recommended or Distinguished Achievement Program-Advanced High School Program and graduated from high school in more than 36 consecutive months but not more than 41 consecutive months and an additional $1,000 if the person graduated with at least 30 hours of college credit; or

(C) $1,000 to apply toward tuition and mandatory fees if the student completed the Recommended or Distinguished Achievement Program-Advanced High School Program and, either:

(i) graduated prior to September 1, 2007, from high school in more than 41 consecutive months but not more than 45 consecutive months with at least 30 hours of college credit, or

(ii) graduated on or after September 1, 2007, from high school in more than 41 consecutive months but not more than 46 consecutive months with at least 30 hours of college credit.

(2) A student who is attending a private or independent institution may not receive a greater state tuition credit in any enrollment period than the amount of institutional aid that is provided by the institution and credited in the same manner, during that enrollment period.

(3) State credits may not be used for continuing education classes that do not receive formula funding.

(c) Form of Award--Exemption or Reimbursement.

(1) If applications are processed and announced in time, institutions should exempt recipients from the payment of relevant charges and then request reimbursement from the Board.

(2) If applications are processed and/or announced too late for the student to be exempted from such payments at registration, the student may be required to pay these charges first, and then be reimbursed by the institution when reimbursement funds are received from the Board.

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General Counsel
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SUBCHAPTER II. EDUCATIONAL AIDE EXEMPTION PROGRAM

19 TAC §21.1081, §21.1083

The Texas Higher Education Coordinating Board adopts amendments to §21.1081 and §21.1083 concerning the Educational Aide Exemption Program, without changes to the proposed text as published in the June 1, 2007, issue of the *Texas Register* (32 TexReg 2963). Specifically, the amendment to §21.1081(4) adds a definition for "educational aide" and clarifies that substitute teachers who have worked in the classroom with students for a minimum of 180 full days in a teaching capacity are included in the definition, allowing such persons to qualify for an exemption under this program. Subsequent definitions in §21.1081 are renumbered accordingly. The definition of "Resident of Texas" is amended to reflect that Senate Bill 1528, 79th Texas Legislature, Regular Session, enacted Texas Education Code, §§54.0501 - 54.075, establishing new provisions to determine if a person is a Texas resident for tuition purposes at institutions of higher education. The new sections were applied beginning with enrollments for the fall semester 2006. The amendment to §21.1083 incorporates the definition of "educational aide" into the requirements for being considered an eligible student.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §54.214(e), which authorizes the Coordinating Board to establish and administer scholarships for the educational aide exemption program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER NN. EXEMPTION PROGRAM FOR VETERANS AND THEIR DEPENDENTS (THE HAZELWOOD ACT)

19 TAC §§21.2100 - 21.2103, 21.2108

The Texas Higher Education Coordinating Board adopts amendments to §§21.2100 - 21.2103 and 21.2108 concerning the Exemption Program for Veterans and Their Dependents (The Hazlewood Act), with changes to the proposed text as published in the June 1, 2007, issue of the *Texas Register* (32 TexReg 2964). Due to the passage of House Bill 125 by the 80th Texas Legislature, amendments to these rules have been revised from what was proposed. Section 21.2100(4) has been revised. Specifically, the amendment to §21.2100(4) reflects the new eligibility of children of veterans or National Guardsmen who are totally disabled due to service-related injuries. Section 21.2100(5), which was proposed for deletion, is reinstated as

revised. The amendment to §21.2100(5) reflects an interpretation of "citizen of Texas" by the Texas Attorney General in Opinion AG-347 issued on August 18, 2005, and defers details of the meaning of "resident of Texas" to the definition given in §21.2100(17). Paragraphs (6) - (20) under §21.2100 do not need to be re-numbered as proposed. New §21.2100(18) is deleted. Amendments to §21.2100(17) reflect updated citations for Coordinating Board rules on determining residency. Amendments to §21.2101 delete subsection (g), regarding flight training at community colleges, because this section no longer appears in the Hazlewood Act statute. Subsections 21.2101(h) and (i) are re-lettered as (g) and (h). Amendments to §21.2102(1) reflect the residency requirements for veterans at the time they enter the service as interpreted by the Texas Attorney General in Opinion AG-347, issued on August 18, 2005. Amendments to §21.2102(3) now have the paragraph rely on the definition of "honorably discharged" as provided in §21.2000(12). Amendments to §21.2102(5) clarify that persons cannot receive Hazlewood exemptions if they are in default on a federal loan but only if that default causes the student to lose access to his or her federal veterans' benefits. Amendments to §21.2103(1)(A) reflect changes to the Hazlewood Act arising from the passage of House Bill 125 by the 80th Texas Legislature. In particular, H.B.125 opens the program to the children of veterans who become totally disabled for purposes of employability. In the past, the only children who could participate were children of deceased veterans. Amendments to §21.2103(1)(B) reflect changes to the exemption from the passage of H.B.125, which opens the program to the children of certain Texas National Guard or Texas Air National Guard members who are totally disabled. In the past, only children of deceased members of the Guard could participate. Amendments to §21.2108 specify that institutions are to submit student-specific data for Hazlewood exemption recipients via the CBM001 report, the state's enrollment report.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §54.203(i), which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §54.203.

§21.2100. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Attempted credit hours--Hours for which the veteran is registered as of the census date of a term or semester.

(2) Board--The Texas Higher Education Coordinating Board.

(3) Census date--the date in an academic term or semester for which an institution is required to certify a person's enrollment in the institution to the board for the purposes of determining formula funding for the institution.

(4) Children--Persons who were dependents of members of the armed forces of the United States at the time they were killed or died or became totally disabled for purposes of employability as a result of injuries directly associated with military service or dependents of members of the Texas National Guard and the Texas Air National Guard killed since January 1, 1946, or who became totally disabled for purposes of employability as a result of a service-related injury suffered since January 1, 1946 while on active duty either in the service of Texas or the United States.

(5) Citizen of Texas--A person who is a United State Citizen and a resident of Texas.

(6) Commissioner--The Commissioner of Higher Education.

(7) Contact hours--A unit of measure that represents an hour of scheduled instruction given to students of which 50 minutes must be of direct instruction. Also referred to as clock hours.

(8) Dependent--An individual who was claimed as a dependent for federal income tax purposes by the individual's parent or court-appointed legal guardian in a particular year and in the previous tax year. A veteran was a dependent if he or she was claimed as such by a parent or legal guardian during the veteran's year of entry into the service and in the previous tax year. A child was a dependent if he or she was claimed as a dependent for tax purposes at the time his or her parent or legal guardian died of injuries or illness directly related to military service.

(9) Extraordinary costs--(for community/junior colleges only) tuition and fee costs that exceed the average tuition and fee charges at the institution.

(10) Federal survivor benefits--Benefits offered the surviving children of deceased veterans through Title 38, United States Code, Chapter 35.

(11) Hazlewood Act Exemption--The tuition and partial fee exemption authorized under Texas Education Code, §54.203.

(12) Honorably discharged--Released from active duty military service with an Honorable Discharge, General Discharge under Honorable Conditions, or Honorable Separation or Release from Active Duty, as documented by the Certificate of Release or Discharge from Active Duty (DD214) issued by the Department of Defense.

(13) Identification number--An individual's social security number.

(14) Institution--A Texas public institution of higher education as defined in Texas Education Code, §61.003(8).

(15) Property deposit fees--Fees that an institution may, under Texas Education Code, §54.502, elect to charge to insure that institution against losses, damages, and breakage in libraries and laboratories.

(16) Registration, date of--The census date of the term for which the student is applying for the Hazlewood Act Exemption.

(17) Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, §§21.727 - 21.736, of this title (relating to Determination of Resident Status and Waiver Programs for Certain Nonresident Persons).

(18) Student service fees--Fees that an institution may, under Texas Education Code, §§54.503, 54.5061 and 54.513, elect to charge to students to cover the cost of student services.

(19) Training--Time spent as a member of the armed forces that is not included in the "Net Active Service" or the sum of "Net Active Service" indicated on the Certificate of Release or Discharge from Active Duty (DD214).

(20) Tuition--All types of tuition that an institution may, under Texas Education Code, Chapter 54, collect from students attending the institution, including statutory tuition, discretionary tuition, designated tuition, and board-authorized tuition.

§21.2101. Hazlewood Act Exemption.

(a) Subject to the following provisions, an institution shall exempt an eligible veterans or child from the payment of tuition and fees, other than property deposit and student service fees. The exemption shall not apply to the payment of fees for services or items that are not required for enrollment in general or for the specific courses taken by the student.

(b) If the eligible veteran or child is entitled to federal veterans' education benefits during the term or semester for which he or she applies for the Hazlewood Act Exemption, an institution shall first apply the federal veterans' education benefits to the payment of the applicable tuition and fees. If the sum of the semester's federal benefits is less than the amount of applicable tuition and fees, the value of the exemption may not exceed the portion of tuition and fees that is not covered by federal benefits.

(c) An eligible veteran or child is not entitled to the Hazlewood Act Exemption for more than 150 attempted credit hours.

(d) An eligible veteran or child is entitled to the Hazlewood Act Exemption for an unlimited number of contact hours.

(e) If the Hazlewood Act Exemption is used for only a portion of the hours taken during a given term or semester, an institution shall deduct the number of hours taken in the semester or term from the 150 hours of eligibility in a manner that is proportionate to the share of the applicable tuition and fees that were subject to the exemption.

(f) Except for correspondence courses, an institution is not permitted to provide the Hazlewood Act Exemption for tuition and fees related to continuing education courses for which the institution does not receive state formula funding, unless the governing board of the institution specifically chooses to provide the exemption for such courses.

(g) Beginning with admissions for spring 2006, the governing board of a junior college district may establish a fee for extraordinary costs associated with a specific course or program.

(h) In determining whether to admit a person to any certificate program or any baccalaureate, graduate, postgraduate, or professional degree program, an institution may not consider the fact that the person is eligible for an exemption through this chapter.

§21.2102. Eligible Veterans.

In order to be eligible to receive a Hazlewood Act Exemption, a veteran shall demonstrate that he or she:

(1) at the time he or she entered the service, was a citizen of the United States and a resident of Texas;

(2) has been classified as a resident by the institution for the term or semester for which the veteran applies for the Hazlewood Act Exemption;

(3) was honorably discharged from service;

(4) has exhausted his or her federal veteran's education benefits, including such benefits as those issued under Title 38, United States Code, Chapters 30, 32, and 35, and Title 10, United States Code, Chapters 1606 and 1607;

(5) is not in default on an education loan made or guaranteed by the State of Texas and is not in default on a federal loan if that default is the reason the student cannot use his or her federal veterans' benefits;

(6) has attempted fewer than 150 credit hours using the Hazlewood Act Exemption beginning with fall of 1995;

(7) has followed the application procedures and schedules required by these provisions; and

(8) belongs to one of the following groups of individuals:

(A) nurses and honorably discharged members of the armed forces of the United States who served during the Spanish-American War or during World War I;

(B) nurses, members of the Women's Army Auxiliary Corps, members of the Women's Auxiliary Volunteer Emergency Service, and honorably discharged members of the armed forces of the United States who served during World War II except those who were discharged from service because they were over the age of 38 or because of a personal request on the part of the person that he be discharged from service;

(C) honorably discharged men and women of the armed forces of the United States who served during the Korean War which began on June 27, 1950, and ended on July 27, 1953; and

(D) all persons who:

(i) were honorably discharged from the armed forces of the United States after serving on active military duty for at least 181 days, excluding training; and

(ii) who served a portion of their active duty during:

(I) the Cold War which began on June 27, 1950;

(II) the Vietnam era which began on December 21, 1961, and ended on May 7, 1975;

(III) the Grenada and Lebanon era which began on August 24, 1982, and ended on July 31, 1984;

(IV) the Panama era which began on December 20, 1989, and ended on January 21, 1990;

(V) the Persian Gulf War which began on August 2, 1990, and ended on March 3, 1991;

(VI) the National Emergency by Reason of Certain Terrorist Attacks, which began on September 11, 2001; and

(VII) any future national emergency declared in accordance with federal law.

§21.2103. Eligible Children.

In order to be eligible to receive a Hazlewood Act Exemption, children shall demonstrate that they:

(1) are dependent children of:

(A) members of the U.S. Armed Forces who were citizens of the United States and residents of Texas when they entered the service and who

(i) died while in service, or

(ii) are missing in action, or

(iii) whose deaths are documented to be directly caused by illness or injury connected with service in the armed forces of the United States; or

(iv) became totally disabled for purposes of employability according to the disability ratings of the Department of Veterans Affairs as a result of a service-related injury; or

(B) members of the Texas National Guard or Texas Air National Guard who:

(i) were killed since January 1, 1946 while on active duty either in the service of Texas or the United States; or

(ii) are totally disabled for purposes of employability according to the disability ratings of the Department of Veterans

Affairs, regardless of whether the members are eligible to receive disability benefits from the department, as a result of a service-related injury suffered since January 1, 1946, while on active duty either in the service of this state or the United States.

(2) have exhausted their federal survivor benefits based on the death of a veteran parent; and

(3) are classified by their institutions as residents of Texas for the term or semester for which they apply for the Hazlewood Act Exemption.

§21.2108. Reporting.

(a) All institutions shall report by means of the Texas Higher Education Coordinating Board's CBM 001 report, for each eligible veteran and child who is exempted from the payment of tuition and mandatory and discretionary fees, other than property deposit and student service fees, the following information to the Board:

(1) the person's name,

(2) the person's identification number (social security number),

(3) the person's date of birth, and

(4) the number of credit hours for which the person received an exemption in the given semester.

(b) All institutions shall submit the report required under this provision to the Board no later than December 31, for the fall term, no later than May 31, for the spring term, and no later than September 30, for the summer term or semester.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 27, 2007.

TRD-200703268
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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Proposal publication date: June 1, 2007
For further information, please call: (512) 427-6114

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CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER I. PROVISIONS FOR THE FIFTH-YEAR ACCOUNTING STUDENT SCHOLARSHIP PROGRAM

19 TAC §22.165

The Texas Higher Education Coordinating Board adopts amendments to §22.165 concerning the Provisions for the Fifth-Year Accounting Student Scholarship Program, without changes to the proposed text as published in the June 1, 2007, issue of the *Texas Register* (32 TexReg 2967). Specifically, the amendments indicate that the maximum award amount will be set each year by the program's advisory committee and that the amount will be announced to the institutions when fund allocations are announced. This will enable the committee to adjust award maximum amounts as appropriate for the funds available for awarding. This is in keeping with the Texas Education Code, §61.757(c), which states: "In addition to any other duties assigned by the board, the advisory committee specifically shall advise the board on . . . the amount of money needed to adequately fund the scholarships and the maximum amount that may be awarded in any given year to an individual student."

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §61.753 and §61.755, which authorizes the Coordinating Board to establish and administer scholarships for fifth-year accounting students.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER L. TOWARD EXCELLENCE, ACCESS, AND SUCCESS (TEXAS) GRANT PROGRAM

19 TAC §22.229, §22.234

The Texas Higher Education Coordinating Board adopts amendments to §22.229 and §22.234 of Board rules, concerning the Toward Excellence, Access and Success (TEXAS) Grant Program, with changes to the proposed text as published in the June 8, 2007, issue of the *Texas Register* (32 TexReg 3095). Proposed amendments to §§22.228(a)(6)(A), 22.228(a)(6)(C), 22.230(f), re-lettered §22.230(h), re-lettered §22.234(d) and (e); and new §22.230(g) and §22.234(c) are withdrawn from consideration for final adoption because Senate Bill 1699 was not passed by the 80th Texas Legislature. Specifically, the adopted amendments to §22.229(a) clarify that all initial award recipients are subject to the same academic progress requirements. There has been some confusion about whether an associate degree holder who enters the TEXAS Grant program as an initial award recipient should meet initial award academic progress requirements or continuation award requirements. Adopted changes to §22.229(b)(1) clarify that continuing award recipients who were awarded their initial TEXAS Grant prior to September 1, 2005, must complete 75 percent of their attempted hours and maintain an overall grade point average of 2.5 or more in order to receive awards in subsequent years. Adopted changes to §22.229(b)(2) indicate that continuing award recipients who were awarded their initial TEXAS Grant on or after September 1, 2005, must complete 75 percent of their attempted hours, complete at least 24 hours per year, and maintain an overall grade point average of 2.5 or more in order to receive awards in subsequent years. Section 22.229(d) is re-lettered as §22.229(c) since §22.229(c) is amended to become §22.229(b)(2). Adopted amendments to §22.234(b)(3) are made to eliminate language that was relevant in FY 2006 as the program transitioned to current statutes that

indicate awards going to students attending private or independent institutions cannot exceed the maximum award authorized through the Tuition Equalization Grant Program. In FY 2006, this provision was only applied to students awarded grants on or after June 18, 2005. The provision now applies to all private or independent school recipients of TEXAS Grants.

The following comment was received regarding the adopted amendments:

Comment: Carol McDonald, President of Independent Colleges and Universities of Texas, Inc., suggested that §22.229(b)(2) be amended to have the same wording as used in §22.229(b)(1) in order to avoid confusion.

Response: The Board agreed with the comment and §22.229(b)(2) has been amended to have the same structure as §22.229(b)(1).

The amendments are adopted under the Texas Education Code, §56.303, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §§56.301 - 56.311.

§22.229. Satisfactory Academic Progress.

(a) As of the end of the first academic year in which a person receives an initial award, each recipient of the TEXAS Grant shall meet the academic progress requirements as indicated by the financial aid office of his or her institution.

(1) A recipient who does not meet the academic progress requirements of his or her institution may not receive an award until the institution has determined that the academic performance requirements have been met.

(2) A recipient who is below program grade point average requirements as of the end of a spring term may appeal his/her grade point average calculation if he/she has taken courses previously at one or more different institutions. In the case of such an appeal, the current institution (if presented with official transcripts from the previous institutions), shall calculate an overall grade point average counting all classes and grade points previously earned. If the resulting grade point average exceeds the current institution's academic progress requirement, an otherwise eligible student may receive an award in the following fall term.

(b) At the end of the year in which a person receives a continuation award:

(1) a recipient who was awarded an initial year TEXAS grant prior to September 1, 2005, shall:

(A) complete at least 75 percent of the hours attempted in his or her most recent academic year, as determined by institutional policies; and

(B) maintain an overall grade point average of at least 2.5 on a four point scale or its equivalent, for all coursework attempted at public or private or independent institutions of higher education.

(2) A recipient who was awarded an initial year award through the TEXAS Grant Program on or after September 1, 2005 shall:

(A) complete at least 75 percent of the hours attempted in his or her most recent academic year, as determined by institutional policies;

(B) complete at least 24 semester credit hours in his or her most recent academic year; and,

(C) maintain an overall grade point average of at least 2.5 on a four point scale or its equivalent, for all coursework attempted at an institution or private or independent institution.

(c) A grant recipient who is below program grade point average requirements as of the end of a spring term may appeal his/her grade point average calculation if he/she has taken courses previously at one or more different institutions. In the case of such an appeal, the current institution (if presented with transcripts from the previous institutions), shall calculate an overall grade point average counting all classes and grade points previously earned. If the resulting grade point average exceeds the program's academic progress requirement, an otherwise eligible student may receive an award in the following fall term.

§22.234. Award Amounts and Adjustments.

(a) Funding. Funds awarded through this program may not exceed the amount of appropriations, gifts, grants and other funds that are available for this use.

(b) Award Amounts.

(1) The amount of a TEXAS Grant awarded through an institution may not be reduced by any gift aid for which the person receiving the grant is eligible, unless the total amount of a person's grant plus any aid other than loans received equals or exceeds the student's tuition and required fees. The amount of a TEXAS Grant awarded to a student attending a private or independent institution may not be reduced by any gift aid for which the person receiving the grant is eligible, unless the total amount of a person's grant plus any gift aid exceeds the student's financial need.

(2) The Board shall determine and announce the maximum amount of a TEXAS Grant award prior to the start of each fiscal year. The calculation of the maximum amount will be based on the mandates contained in Texas Education Code, §56.307. However, no student's award shall be greater than the amount of the student's financial need.

(3) For students enrolled in eligible private or independent institutions,

(A) The amount of the TEXAS Grant may not exceed the maximum award possible through the Tuition Equalization Grant Program (Texas Education Code, §61.221).

(B) No student may receive both a TEXAS Grant and a Tuition Equalization Grant in the same term or semester.

(4) An eligible institution may not charge a person receiving a TEXAS Grant through that institution, an amount of tuition and required fees in excess of the amount of the TEXAS Grant received by the person unless it also provides the student sufficient aid other than loans to meet his or her full tuition and required fees. Nor may it deny admission to or enrollment in the institution based on a person's eligibility to receive or actual receipt of a TEXAS Grant.

(5) The eligible institution may require a student to forgo or repay the amount of an initial TEXAS Grant awarded to the student as described in §22.228(a)(6)(B) of this title (relating to Eligible Students) if the student is determined to have failed to complete the Recommended or Advanced High School Program or its equivalent as evidenced by the final high school transcript.

(6) If the money available for TEXAS Grants is sufficient to provide grants to all eligible applicants in the amounts specified in paragraphs (1) - (4) of this subsection, the Board may use any excess money to award a grant in an amount not more than three times the amount that may be awarded under paragraphs (1) - (4) of this subsection, to a student who:

(A) is enrolled in a program that fulfills the educational requirements for licensure or certification by the state in a health care profession that the Board, in consultation with the Texas Workforce Commission and the Statewide Health Coordinating Council, has identified as having a critical shortage in the number of license holders needed in this state;

(B) has completed at least one-half of the work toward a degree or certificate that fulfills the educational requirement for licensure or certification; and

(C) meets all the requirements to receive a grant award under §22.228 of this title.

(7) An award to an otherwise eligible student enrolled for less than a three quarter-time load is to be prorated. The amount he/she can be awarded is equal to the semester's maximum award for the relevant type of institution, divided by twelve hours and multiplied by the actual number of hours for which the student enrolled.

(c) Uses. A person receiving a TEXAS Grant may only use the money to pay any usual and customary cost of attendance at an institution of higher education incurred by the student.

(d) Over Awards. If, at a time after an award has been offered by the institution and accepted by the student, the student receives assistance that was not taken into account in the student's estimate of financial need, so that the resulting sum of assistance exceeds the student's financial need, the institution is not required to adjust the award under this program unless the sum of the excess resources is greater than $300.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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SUBCHAPTER P. EXEMPTION PROGRAM FOR CLINICAL PRECEPTORS AND THEIR CHILDREN

19 TAC §22.305, §22.306

The Texas Higher Education Coordinating Board adopts amendments to §22.305 and §22.306 concerning the Exemption Program for Clinical Preceptors and their Children, without changes to the proposed text as published in the June 1, 2007, issue of the *Texas Register* (32 TexReg 2968). Specifically, the adopted amendments to §22.305 clarify that, in a given term, the preceptor, in order to receive an exemption, must serve at a minimum an average of one day per week for the time period the program conducts clinicals. In addition, the adopted amendments reflect changes to the authorizing legislation as a result of the passage of Senate Bill 201 by the 80th Texas Legislature, which extended the preceptor's eligibility to use an exemption to any term that begins within one year of the end of the term in which the person served as a preceptor. Previously, the program required the employment and use of the exemption to be simultaneous. The adopted amendments to §22.306 simplify the description of the enabling parent by referencing §22.305 (relating to Eligible Preceptors), in which the parent's requirements are outlined. In addition, in keeping with Senate Bill 201, the section now clarifies that a child and the preceptor parent may both receive exemptions based on the same semester or term of service.

No comments were received regarding the adopted amendments.

The amendments are adopted under the Texas Education Code, §54.222(g), which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §54.222.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING THE ANNUAL EVALUATION OF DISCIPLINARY ALTERNATIVE EDUCATION PROGRAMS

19 TAC §97.1021

The Texas Education Agency (TEA) adopts the repeal of §97.1021, concerning disciplinary alternative education programs. The repeal is adopted without changes to the proposed text as published in the June 1, 2007, issue of the *Texas Register* (32 TexReg 2970) and will not be republished. The adopted repeal removes from rule specifications relating to evaluation of the performance of disciplinary alternative education programs. This repeal is adopted in order to comply with legislative changes relating to limitation on compliance monitoring in accordance with House Bill (HB) 3459, 78th Texas Legislature, 2003.

Effective February 14, 2001, the commissioner of education adopted 19 TAC §97.1021, exercising rulemaking authority over developing a process for evaluating a school district disciplinary alternative education program in accordance with Texas Education Code, §37.008(m). The rule addresses the definition of the program and describes an annual evaluation by the TEA of each district's program, including performance data and specific indicators to be evaluated.

In 2003, the 78th Texas Legislature enacted HB 3459, adding TEC, §7.027 (renumbered to §7.028 in subsequent legislative session), which limits compliance monitoring by the state. TEC, §7.028, gives the board of trustees of a school district or the governing body of an open-enrollment charter school the primary responsibility for ensuring that the district or school complies with all applicable requirements of state educational programs. As a consequence of TEC, §7.028, activities relating to provisions under TEC, §37.008(m), including rulemaking requirements, were suspended.

In addition to TEC, §7.028, TEC, §37.008(m-1), was added and directs the commissioner to identify districts that indicate high risk of data and compliance violations. As a result of these two legislative requirements, the TEA developed a new agency-wide Performance-Based Monitoring (PBM) system. This new monitoring system replaced the former process outlined in the rule being repealed and includes a data validation component.

The adopted repeal of 19 TAC Chapter 97, Subchapter CC, §97.1021, implements these legislative changes.

The public comment period on the proposal began June 1, 2007, and ended July 1, 2007. No public comments were received.

The repeal is adopted under the Texas Education Code (TEC), §7.028, which establishes a limitation on compliance monitoring (including suspension of rulemaking requirements under TEC, §37.008(m)) and TEC, §37.008(m-1), which directs the commissioner to identify districts that indicate a high risk of data and compliance violations. As a result of TEC, §7.028 and §37.008(m-1), the TEA developed a new agency-wide Performance-Based Monitoring system that includes a data validation component.

The repeal implements the TEC, §7.028 and §37.008(m-1).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 26, 2007.

TRD-200703247
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: August 15, 2007
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For further information, please call: (512) 475-1497

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 101. GENERAL AIR QUALITY RULES

The Texas Commission on Environmental Quality (TCEQ or commission) adopts amendments to §§101.1, 101.302, 101.306, 101.350, 101.351, 101.353, 101.354, 101.360, 101.372, 101.376, 101.383, and 101.385 and the repeal of §101.22. Sections 101.1, 101.302, 101.306, 101.353, 101.354, and 101.376 are adopted *with changes* to the proposed text as published in the February 23, 2007, issue of the *Texas Register*. Sections 101.22, 101.350, 101.351, 101.360, 101.372, 101.383, and 101.385 are adopted *without changes* to the proposed text and will not be republished.

The commission does not adopt the proposed amendment to §101.23 as published in the February 23, 2007, issue of the *Texas Register*.

The amended §§101.1, 101.302, 101.306, 101.350, 101.351, 101.353, 101.354, 101.360, 101.372, 101.376, 101.383, and 101.385 and the repeal of §101.22 will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the Texas State Implementation Plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The commission has adopted revisions to 30 TAC Chapter 117, Control of Air Pollution from Nitrogen Compounds, as part of the SIP for the Houston-Galveston-Brazoria (HGB) and Dallas-Fort Worth nonattainment areas. Under those revisions, Chapter 117 was reorganized. Chapter 101, General Air Quality Rules, contains references to sections of Chapter 117 which have changed due to the reorganization, requiring that the cited references in Chapter 101 also change. This adoption also includes revisions identified during the last quadrennial review of Chapter 101, including changes to the definitions of cold solvent cleaning, conveyorized degreasing, high-volume low-pressure spray guns, open top vapor degreasing, standard conditions, and visible emissions. Other changes include the deletion of the definitions of hazardous waste management facility and hazardous waste management unit, the addition of a definition for nitrogen oxides, and the removal of an obsolete effective date section. EPA comments dealing with some references unrelated to the Chapter 117 reorganization, resulted in some changes.

SECTION BY SECTION DISCUSSION

§101.1. Definitions.

The commission adopts the modification of the opening paragraph of this section to specify that the definitions in §101.1 apply to all air quality rules. The commission adopts the changes to the definitions of cold solvent cleaning, conveyorized degreasing, and open-top vapor degreasing by deleting the word "metal" so that the processes also apply to cleaning non-metal parts. The adopted amendment deletes the definitions of hazardous waste management facility and hazardous waste management unit because references to these definitions are not found in any of the air rules. The adopted revision to the definition of high-volume low-pressure spray guns specifies that the operating pressure of this equipment is measured at the air cap because this provides the most accurate measurement. The commission adopts the addition of the definition of nitrogen oxides from Chapter 117 because this is a common term used throughout the commission's air quality rules. The adopted amendment deletes the last sentence of the definition of standard conditions that reads: "Pollutant concentrations from an incinerator will be corrected to a condition of 50% excess air if the incinerator is operating at greater than 50% excess air." The amount of air present in combustion is variable and does not qualify as a standard condition. The commission adopts the change in the second sentence of the definition of visible emissions to read: "The radiant energy from an open flame is not considered a visible emission under this definition." Radiant energy may manifest some visual effects but there is no air contaminant emitted.

§101.22. Effective Date.

The commission adopts the repeal of this section because it is no longer required.

§101.302. General Provisions.

The commission adopts the references to the newly renumbered Chapter 117 sections. The section has been revised since proposal due to a comment submitted by the EPA to remove the reference to §117.3310, Emission Specifications for Eight-Hour Attainment Demonstration, from §101.302(d)(1)(A) since the East Texas area is attainment for all pollutants.

§101.306. Emission Credit Use.

The commission adopts the references to the newly renumbered Chapter 117 sections. The section has been revised since proposal to remove the reference to §117.3123 from §101.306(b)(3) because the rule does not require it to be referenced in the equation under Figure 30 TAC §101.306(b)(3). Also, references to maximum daily cap and references to emission credits that are to be used for compliance with the requirements of 30 TAC Chapters 114, Control of Air Pollution from Motor Vehicles, Chapter 115, Control of Air Pollution from Volatile Organic Compounds (VOCs), or Chapter 117 or other programs, were added to this section since proposal due to a comment submitted by the EPA.

§101.350. Definitions.

The commission adopts the replacement of the definition of Houston/Galveston (HGA) ozone nonattainment area with HGB ozone nonattainment area because the name of the nonattainment area has changed.

§101.351. Applicability.

The commission adopts the replacement of references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections.

§101.353. Allocation of Allowances.

The commission adopts the replacement of references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections. This section has been changed since proposal to add references to sections dealing with Initial Demonstration of Compliance. These changes were unrelated to the comments submitted by EPA.

§101.354. Allowance Deductions.

The commission adopts the replacement of references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections.

§101.360. Level of Activity Certification.

The commission adopts the replacement of references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections.

§101.372. General Provisions.

The commission adopts the replacement of references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections.

§101.376. Discrete Emission Credit Use.

The commission adopts the replacement of references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections. This section has been changed since proposal due to a comment submitted by the EPA to correctly reference maximum daily caps instead of rolling 30-day average emission caps.

§101.383. General Provisions.

The commission adopts the replacement of references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections.

§101.385. Recordkeeping and Reporting.

The commission adopts the replacement of references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections.

The commission also adopts minor administrative changes to address conformity to *Texas Register* requirements and other agency rules and guidelines.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that this adoption is not subject to §2001.0225 because it does not meet the definition of a major environmental rule as defined in that statute. A "major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Although the ultimate intent is to protect the environment, these adopted amendments are mainly the result of an administrative action only, to correct and update cross-references to Chapter 117, which has been reorganized, modify certain definitions, and make other procedural changes to Chapter 101.

Chapter 117, Control of Air Pollution from Nitrogen Compounds, has been reorganized. Chapter 101, General Air Quality Rules, contains extensive references to sections of Chapter 117 that were renumbered because of the reorganization. The references contained in Chapter 101 must change accordingly. This adoption also includes revisions identified during the last quadrennial review of Chapter 101 by the executive director and includes changes to the definitions of visible emissions, cold solvent cleaning, conveyorized degreasing, open-top vapor degreasing, high-volume low-pressure spray guns, and standard conditions. Other adopted changes include deleting the definitions of hazardous waste management facility and hazardous waste management unit, adding a definition for nitrogen oxides, and removing an obsolete effective date section. The adopted rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

In addition, a regulatory impact analysis is not required because the rules do not meet any of the four applicability criteria for requiring a regulatory impact analysis of a major environmental rule as defined in the Texas Government Code. Section 2001.0225 applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general

powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law, and the adopted requirements are consistent with applicable federal standards. In addition, this adoption does not exceed an express requirement of state law and is not adopted solely under the general powers of the agency, but is specifically authorized by the provisions cited in the STATUTORY AUTHORITY section of this preamble. Finally, this rulemaking does not exceed a requirement of a delegation agreement or contract to implement a state and federal program.

The commission solicited comments on the draft regulatory impact analysis determination and no comments were received.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether the adopted rules are subject to Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to update references to sections of Chapter 117, which has been reorganized, to modify certain definitions, and to make other procedural changes to Chapter 101. These amendments do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Promulgation and enforcement of these adopted rules is neither a statutory nor a constitutional taking because they do not affect private real property. Therefore, these rules do not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the amendments are consistent with CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). The adopted rules update references and definitions. No new sources of air contaminants will be authorized and the revisions will maintain the same level of emissions control as previous rules. The CMP policy applicable to this rulemaking action is the policy that the commission's rules comply with federal regulations in 40 Code of Federal Regulations, to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 Code of Federal Regulations Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

The commission solicited comments on the consistency of this rulemaking, but no comments on the CMP were received.

PUBLIC COMMENT

A public hearing on the proposal was held in Austin on March 20, 2007 at the TCEQ. No comments were received at the public hearing. The commission received written comments from the EPA and Eternal Springs Wellness during the public comment period, which closed on March 26, 2007.

EPA suggested modifications to the adopted rules as stated in the RESPONSE TO COMMENTS section of this preamble, and commented that they appreciate efforts made to update definitions and references in Chapter 101 that are changing due to the reorganization of Chapter 117.

RESPONSE TO COMMENTS

Eternal Springs Wellness commented that they oppose delaying the plan until 2018 and would like to see cleaner air now. Eternal Springs Wellness commented that they would like to see the implementation of California standards and VOC storage tank/degassing regulations strengthened and implemented by January 1, 2009.

RESPONSE

The commission appreciates the commenters' interest in air quality. The comments do not relate to the proposed Chapter 101 revisions, and no changes to the rule have been made in response to them.

EPA noted that since §101.23 is no longer part of the federally approved regulations in the Texas SIP, they would be unable to approve the proposed administrative changes to this section.

RESPONSE

The commission agrees that §101.23 is not part of the federally approved regulations in the Texas SIP. The commission applies the conditions of this section either through other rules of the commission or through individual permits, and the proposed amendments to §101.23 have not been adopted.

EPA noted that, to be included in the Texas SIP, the Alternate Emission Reduction Policy would need to be developed in accordance with EPA's guidance on economic incentive programs, as well as meet applicable Clean Air Act requirements.

RESPONSE

The commission is not currently considering whether to adopt any rules regarding an alternate emission reduction policy.

EPA commented that §101.302(d)(1)(A) incorrectly references §117.3310, since emission reduction credits (ERCs) only apply to nonattainment areas.

RESPONSE

The rule has been revised to remove the reference to §117.3310.

EPA commented that there is an inconsistency in §101.306(b)(3) with Figure 30 TAC §101.306(b)(3) and §101.376(d)(2) with Figure 30 TAC §101.376(d)(2)(A). Sections 101.306(b)(3) and 101.376(d)(2) allow the use of credits for compliance with §117.3123 but the section is not included in the figures Figure: 30 TAC §101.306(b)(3) and Figure: 30 TAC §101.376(d)(2)(A).

RESPONSE

The rule has been revised to remove the reference to §117.3123 from §101.306(b)(3). Section 117.9800 allows ERCs and discrete emission reduction credits (DERCs) to be used for alternative compliance with §117.3123. However, the equation to determine compliance to the source cap in §117.3123 is different from the equations in Figure 30 TAC §101.306(b)(3) and Figure 30 TAC §101.376(d)(2)(A)(i). For compliance with §117.3123, the equations in §117.3123 are required to be used in place of Figure 30 TAC §101.306(b)(3) or Figure 30 TAC §101.376(d)(2)(A)(i).

EPA commented that Figure 30 TAC §101.306(b)(3) does not reference the maximum daily cap requirements found in §101.306(b)(2).

RESPONSE

The rule has been revised to include references to both the 30-day rolling average and the maximum daily cap average requirements for system caps and source caps.

EPA commented that Figure 30 TAC §101.376(d)(2)(A)(ii) incorrectly references §§117.123(b)(1), 117.223(b)(1), 117.323(b)(1), and 117.423(b)(1), which refer to rolling 30-day average emission caps instead of maximum daily caps.

RESPONSE

The rule has been revised to change the citations to §§117.123(b)(2), 117.223(b)(2), 117.323(b)(2) and 117.423(b)(2).

SUBCHAPTER A. GENERAL RULES

30 TAC §101.1

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the Texas Water Code; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended section is also adopted under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The amended section is also adopted under §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions; and §382.051, concerning Permitting Authority of Commission; Rules, that authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC, Chapter 382. The amended section is also adopted under the Federal Clean Air Act, 42 United States Code, §§7401 - 7671q.

The amended section implements THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 380.051.

§101.1. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the TCAA, the following terms, when used in the air quality rules in this title, have the following meanings, unless the context clearly indicates otherwise.

(1) Account--For those sources required to be permitted under Chapter 122 of this title (relating to Federal Operating Permits Program), all sources that are aggregated as a site. For all other sources, any combination of sources under common ownership or control and located on one or more contiguous properties, or properties contiguous except for intervening roads, railroads, rights-of-way, waterways, or similar divisions.

(2) Acid gas flare--A flare used exclusively for the incineration of hydrogen sulfide and other acidic gases derived from natural gas sweetening processes.

(3) Agency established facility identification number--For the purposes of Subchapter F of this chapter (relating to Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities), a unique alphanumeric code required to be assigned by the owner or operator of a regulated entity that the emission inventory reporting requirements of §101.10 of this title (relating to Emissions Inventory Requirements) are applicable to each facility at that regulated entity.

(4) Ambient air--That portion of the atmosphere, external to buildings, to which the general public has access.

(5) Background--Background concentration, the level of air contaminants that cannot be reduced by controlling emissions from man-made sources. It is determined by measuring levels in non-urban areas.

(6) Boiler--Any combustion equipment fired with solid, liquid, and/or gaseous fuel used to produce steam or to heat water.

(7) Capture system--All equipment (including, but not limited to, hoods, ducts, fans, booths, ovens, dryers, etc.) that contains, collects, and transports an air pollutant to a control device.

(8) Captured facility--A manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(9) Carbon adsorber--An add-on control device that uses activated carbon to adsorb volatile organic compounds from a gas stream.

(10) Carbon adsorption system--A carbon adsorber with an inlet and outlet for exhaust gases and a system to regenerate the saturated adsorbent.

(11) Coating--A material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealants, adhesives, thinners, diluents, inks, maskants, and temporary protective coatings.

(12) Cold solvent cleaning--A batch process that uses liquid solvent to remove soils from the surfaces of parts or to dry the parts by spraying, brushing, flushing, and/or immersion while maintaining the solvent below its boiling point. Wipe cleaning (hand cleaning) is not included in this definition.

(13) Combustion unit--Any boiler plant, furnace, incinerator, flare, engine, or other device or system used to oxidize solid, liquid, or gaseous fuels, but excluding motors and engines used in propelling land, water, and air vehicles.

(14) Combustion turbine--Any gas turbine system that is gas and/or liquid fuel fired with or without power augmentation. This unit is either attached to a foundation or is portable equipment operated at a specific minor or major source for more than 90 days in any 12-

month period. Two or more gas turbines powering one shaft will be treated as one unit.

(15) Commercial hazardous waste management facility--Any hazardous waste management facility that accepts hazardous waste or polychlorinated biphenyl compounds for a charge, except a captured facility that disposes only waste generated on-site or a facility that accepts waste only from other facilities owned or effectively controlled by the same person.

(16) Commercial incinerator--An incinerator used to dispose of waste material from retail and wholesale trade establishments.

(17) Commercial medical waste incinerator--A facility that accepts for incineration medical waste generated outside the property boundaries of the facility.

(18) Component--A piece of equipment, including, but not limited to, pumps, valves, compressors, and pressure relief valves that has the potential to leak volatile organic compounds.

(19) Condensate--Liquids that result from the cooling and/or pressure changes of produced natural gas. Once these liquids are processed at gas plants or refineries or in any other manner, they are no longer considered condensates.

(20) Construction-demolition waste--Waste resulting from construction or demolition projects.

(21) Control system or control device--Any part, chemical, machine, equipment, contrivance, or combination of same, used to destroy, eliminate, reduce, or control the emission of air contaminants to the atmosphere.

(22) Conveyorized degreasing--A solvent cleaning process that uses an automated parts handling system, typically a conveyor, to automatically provide a continuous supply of parts to be cleaned or dried using either cold solvent or vaporized solvent. A conveyorized degreasing process is fully enclosed except for the conveyor inlet and exit portals.

(23) Criteria pollutant or standard--Any pollutant for which there is a national ambient air quality standard established under 40 Code of Federal Regulations Part 50.

(24) Custody transfer--The transfer of produced crude oil and/or condensate, after processing and/or treating in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.

(25) *De minimis* impact--A change in ground level concentration of an air contaminant as a result of the operation of any new major stationary source or of the operation of any existing source that has undergone a major modification that does not exceed the following specified amounts.
Figure: 30 TAC §101.1(25) (No change.)

(26) Domestic wastes--The garbage and rubbish normally resulting from the functions of life within a residence.

(27) Emissions banking--A system for recording emissions reduction credits so they may be used or transferred for future use.

(28) Emissions event--Any upset event or unscheduled maintenance, startup, or shutdown activity, from a common cause that results in unauthorized emissions of air contaminants from one or more emissions points at a regulated entity.

(29) Emissions reduction credit--Any stationary source emissions reduction that has been banked in accordance with Chapter 101, Subchapter H, Division 1 of this title (relating to Emission Credit Banking and Trading).

(30) Emissions reduction credit certificate--The certificate issued by the executive director that indicates the amount of qualified reduction available for use as offsets and the length of time the reduction is eligible for use.

(31) Emissions unit--Any part of a stationary source that emits, or would have the potential to emit, any pollutant subject to regulation under the Federal Clean Air Act.

(32) Excess opacity event--When an opacity reading is equal to or exceeds 15 additional percentage points above an applicable opacity limit, averaged over a six-minute period.

(33) Exempt solvent--Those carbon compounds or mixtures of carbon compounds used as solvents that have been excluded from the definition of volatile organic compound.

(34) External floating roof--A cover or roof in an open top tank that rests upon or is floated upon the liquid being contained and is equipped with a single or double seal to close the space between the roof edge and tank shell. A double seal consists of two complete and separate closure seals, one above the other, containing an enclosed space between them.

(35) Federal motor vehicle regulation--Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines, 40 Code of Federal Regulations Part 85.

(36) Federally enforceable--All limitations and conditions that are enforceable by the United States Environmental Protection Agency administrator, including those requirements developed under 40 Code of Federal Regulations (CFR) Parts 60 and 61; requirements within any applicable state implementation plan (SIP); and any permit requirements established under 40 CFR §52.21 or under regulations approved under 40 CFR Part 51, Subpart 1, including operating permits issued under the approved program that is incorporated into the SIP and that expressly requires adherence to any permit issued under such program.

(37) Flare--An open combustion unit (i.e., lacking an enclosed combustion chamber) whose combustion air is provided by uncontrolled ambient air around the flame, and that is used as a control device. A flare may be equipped with a radiant heat shield (with or without a refractory lining), but is not equipped with a flame air control damping system to control the air/fuel mixture. In addition, a flare may also use auxiliary fuel. The combustion flame may be elevated or at ground level. A vapor combustor, as defined in this section, is not considered a flare.

(38) Fuel oil--Any oil meeting the American Society for Testing and Materials (ASTM) specifications for fuel oil in ASTM D396-01, Standard Specifications for Fuel Oils, revised 2001. This includes fuel oil grades 1, 1 (Low Sulfur), 2, 2 (Low Sulfur), 4 (Light), 4, 5 (Light), 5 (Heavy), and 6.

(39) Fugitive emission--Any gaseous or particulate contaminant entering the atmosphere that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening designed to direct or control its flow.

(40) Garbage--Solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, and handling and sale of produce and other food products.

(41) Gasoline--Any petroleum distillate having a Reid vapor pressure of four pounds per square inch (27.6 kilopascals) or greater that is produced for use as a motor fuel, and is commonly called gasoline.

(42) Hazardous wastes--Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq*., as amended.

(43) Heatset (used in offset lithographic printing)--Any operation where heat is required to evaporate ink oil from the printing ink. Hot air dryers are used to deliver the heat.

(44) High-bake coatings--Coatings designed to cure at temperatures above 194 degrees Fahrenheit.

(45) High-volume low-pressure spray guns--Equipment used to apply coatings by means of a spray gun that operates between 0.1 and 10.0 pounds per square inch gauge air pressure measured at the air cap.

(46) Incinerator--An enclosed combustion apparatus and attachments that is used in the process of burning wastes for the primary purpose of reducing its volume and weight by removing the combustibles of the waste and is equipped with a flue for conducting products of combustion to the atmosphere. Any combustion device that burns 10% or more of solid waste on a total British thermal unit (Btu) heat input basis averaged over any one-hour period is considered to be an incinerator. A combustion device without instrumentation or methodology to determine hourly flow rates of solid waste and burning 1.0% or more of solid waste on a total Btu heat input basis averaged annually is also considered to be an incinerator. An open-trench type (with closed ends) combustion unit may be considered an incinerator when approved by the executive director. Devices burning untreated wood scraps, waste wood, or sludge from the treatment of wastewater from the process mills as a primary fuel for heat recovery are not included under this definition. Combustion devices permitted under this title as combustion devices other than incinerators will not be considered incinerators for application of any rule within this title provided they are installed and operated in compliance with the condition of all applicable permits.

(47) Industrial boiler--A boiler located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes.

(48) Industrial furnace--Cement kilns; lime kilns; aggregate kilns; phosphate kilns; coke ovens; blast furnaces; smelting, melting, or refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, or foundry furnaces; titanium dioxide chloride process oxidation reactors; methane reforming furnaces; pulping recovery furnaces; combustion devices used in the recovery of sulfur values from spent sulfuric acid; and other devices the commission may list.

(49) Industrial solid waste--Solid waste resulting from, or incidental to, any process of industry or manufacturing, or mining or agricultural operations, classified as follows.

(A) Class 1 industrial solid waste or Class 1 waste is any industrial solid waste designated as Class 1 by the executive director as any industrial solid waste or mixture of industrial solid wastes that because of its concentration or physical or chemical characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, and may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or otherwise managed, including hazardous industrial waste, as defined in §335.1 and §335.505 of this title (relating to Definitions and Class 1 Waste Determination).

(B) Class 2 industrial solid waste is any individual solid waste or combination of industrial solid wastes that cannot be described as Class 1 or Class 3, as defined in §335.506 of this title (relating to Class 2 Waste Determination).

(C) Class 3 industrial solid waste is any inert and essentially insoluble industrial solid waste, including materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable as defined in §335.507 of this title (relating to Class 3 Waste Determination).

(50) Internal floating cover--A cover or floating roof in a fixed roof tank that rests upon or is floated upon the liquid being contained, and is equipped with a closure seal or seals to close the space between the cover edge and tank shell.

(51) Leak--A volatile organic compound concentration greater than 10,000 parts per million by volume or the amount specified by applicable rule, whichever is lower; or the dripping or exuding of process fluid based on sight, smell, or sound.

(52) Liquid fuel--A liquid combustible mixture, not derived from hazardous waste, with a heating value of at least 5,000 British thermal units per pound.

(53) Liquid-mounted seal--A primary seal mounted in continuous contact with the liquid between the tank wall and the floating roof around the circumference of the tank.

(54) Maintenance area--A geographic region of the state previously designated nonattainment under the Federal Clean Air Act Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under 42 United States Code, §7505a. The following are the maintenance areas within the state:

(A) Victoria Ozone Maintenance Area 60 (*Federal Register* (FR) 12453) - Victoria County; and

(B) Collin County Lead Maintenance Area (64 FR 55421) - Portion of Collin County. Eastside: Starting at the intersection of South Fifth Street and the fence line approximately 1,000 feet south of the Exide property line going north to the intersection of South Fifth Street and Eubanks Street; Northside: Proceeding west on Eubanks to the Burlington Railroad tracks; Westside: Along the Burlington Railroad tracks to the fence line approximately 1,000 feet south of the Exide property line; Southside: Fence line approximately 1,000 feet south of the Exide property line.

(55) Maintenance plan--A revision to the applicable state implementation plan, meeting the requirements of 42 United States Code, §7505a.

(56) Marine vessel--Any watercraft used, or capable of being used, as a means of transportation on water, and that is constructed or adapted to carry, or that carries, oil, gasoline, or other volatile organic liquid in bulk as a cargo or cargo residue.

(57) Mechanical shoe seal--A metal sheet that is held vertically against the storage tank wall by springs or weighted levers and is connected by braces to the floating roof. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

(58) Medical waste--Waste materials identified by the Department of State Health Services as "special waste from health care-related facilities" and those waste materials commingled and discarded with special waste from health care-related facilities.

(59) Metropolitan Planning Organization--That organization designated as being responsible, together with the state, for

conducting the continuing, cooperative, and comprehensive planning process under 23 United States Code (USC), §134 and 49 USC, §1607.

(60) Mobile emissions reduction credit--The credit obtained from an enforceable, permanent, quantifiable, and surplus (to other federal and state rules) emissions reduction generated by a mobile source as set forth in Chapter 114, Subchapter F of this title (relating to Vehicle Retirement and Mobile Emission Reduction Credits), and that has been banked in accordance with Subchapter H, Division 1 of this chapter.

(61) Motor vehicle--A self-propelled vehicle designed for transporting persons or property on a street or highway.

(62) Motor vehicle fuel dispensing facility--Any site where gasoline is dispensed to motor vehicle fuel tanks from stationary storage tanks.

(63) Municipal solid waste--Solid waste resulting from, or incidental to, municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste except industrial solid waste.

(64) Municipal solid waste facility--All contiguous land, structures, other appurtenances, and improvements on the land used for processing, storing, or disposing of solid waste. A facility may be publicly or privately owned and may consist of several processing, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.

(65) Municipal solid waste landfill--A discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 Code of Federal Regulations §257.2. A municipal solid waste landfill (MSWLF) unit also may receive other types of Resource Conservation and Recovery Act Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small-quantity generator waste, and industrial solid waste. Such a landfill may be publicly or privately owned. An MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion.

(66) National ambient air quality standard--Those standards established under 42 United States Code, §7409, including standards for carbon monoxide, lead, nitrogen dioxide, ozone, inhalable particulate matter, and sulfur dioxide.

(67) Net ground-level concentration--The concentration of an air contaminant as measured at or beyond the property boundary minus the representative concentration flowing onto a property as measured at any point. Where there is no expected influence of the air contaminant flowing onto a property from other sources, the net ground level concentration may be determined by a measurement at or beyond the property boundary.

(68) New source--Any stationary source, the construction or modification of which was commenced after March 5, 1972.

(69) Nitrogen oxides (NO_x)--The sum of the nitric oxide and nitrogen dioxide in the flue gas or emission point, collectively expressed as nitrogen dioxide.

(70) Nonattainment area--A defined region within the state that is designated by the United States Environmental Protection Agency (EPA) as failing to meet the national ambient air quality standard for a pollutant for which a standard exists. The EPA will designate the area as nonattainment under the provisions of 42 United States Code, §7407(d). For the official list and boundaries of nonattainment areas, see 40 Code of Federal Regulations Part 81 and pertinent *Federal Register* (FR) notices. The following areas comprise the nonattainment areas within the state for all national ambient air quality standards (NAAQS). EPA has indicated that it will revoke the one-hour ozone standard in full, including the associated designations and classifications, on June 15, 2005, which is one year following the effective date of the designations for the eight-hour NAAQS of June 15, 2004.

(A) Carbon monoxide (CO). El Paso CO nonattainment area (56 FR 56694)--Classified as a Moderate CO nonattainment area with a design value less than or equal to 12.7 parts per million. Portion of El Paso County. Portion of the city limits of El Paso: That portion of the City of El Paso bounded on the north by Highway 10 from Porfirio Diaz Street to Raynolds Street, Raynolds Street from Highway 10 to the Southern Pacific Railroad lines, the Southern Pacific Railroad lines from Raynolds Street to Highway 62, Highway 62 from the Southern Pacific Railroad lines to Highway 20, and Highway 20 from Highway 62 to Polo Inn Road. Bounded on the east by Polo Inn Road from Highway 20 to the Texas-Mexico border. Bounded on the south by the Texas-Mexico border from Polo Inn Road to Porfirio Diaz Street. Bounded on the west by Porfirio Diaz Street from the Texas-Mexico border to Highway 10.

(B) Inhalable particulate matter (PM_{10}). El Paso PM_{10} nonattainment area (56 FR 56694)--Classified as a Moderate PM_{10} nonattainment area. Portion of El Paso County that comprises the El Paso city limit boundaries as they existed on November 15, 1990.

(C) Lead. No designated nonattainment areas.

(D) Nitrogen dioxide. No designated nonattainment areas.

(E) Ozone (one-hour).

(i) Houston-Galveston-Brazoria (HGB) one-hour ozone nonattainment area (56 FR 56694) - Classified as a Severe-17 ozone nonattainment area. Consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(ii) El Paso one-hour ozone nonattainment area (56 FR 56694) - Classified as a Serious ozone nonattainment area. Consists of El Paso County.

(iii) Beaumont-Port Arthur (BPA) one-hour ozone nonattainment area (69 FR 16483) - Classified as a Serious ozone nonattainment area. Consists of Hardin, Jefferson, and Orange Counties.

(iv) Dallas-Fort Worth one-hour ozone nonattainment area (63 FR 8128) - Classified as a Serious ozone nonattainment area. Consists of Collin, Dallas, Denton, and Tarrant Counties.

(F) Ozone (eight-hour).

(i) HGB eight-hour ozone nonattainment area (69 FR 23936) - Classified as a Moderate ozone nonattainment area. Consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(ii) BPA eight-hour ozone nonattainment area (69 FR 23936) - Classified as a Marginal ozone nonattainment area. Consists of Hardin, Jefferson, and Orange Counties.

(iii) Dallas-Fort Worth eight-hour ozone nonattainment area (69 FR 23936) - Classified as a Moderate ozone nonattainment area. Consists of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties.

(iv) San Antonio eight-hour ozone nonattainment area (69 FR 23936) - Classified under the Federal Clean Air Act, Title

I, Part D, Subpart 1 (42 United States Code, §7502), nonattainment deferred to September 30, 2005, or as extended by EPA.

(G) Sulfur dioxide. No designated nonattainment areas.

(71) Non-reportable emissions event--Any emissions event that in any 24-hour period does not result in an unauthorized emission from any emissions point equal to or in excess of the reportable quantity as defined in this section.

(72) Opacity--The degree to which an emission of air contaminants obstructs the transmission of light expressed as the percentage of light obstructed as measured by an optical instrument or trained observer.

(73) Open-top vapor degreasing--A batch solvent cleaning process that is open to the air and that uses boiling solvent to create solvent vapor used to clean or dry parts through condensation of the hot solvent vapors on the parts.

(74) Outdoor burning--Any fire or smoke-producing process that is not conducted in a combustion unit.

(75) Particulate matter--Any material, except uncombined water, that exists as a solid or liquid in the atmosphere or in a gas stream at standard conditions.

(76) Particulate matter emissions--All finely-divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by United States Environmental Protection Agency Reference Method 5, as specified at 40 Code of Federal Regulations (CFR) Part 60, Appendix A, modified to include particulate caught by an impinger train; by an equivalent or alternative method, as specified at 40 CFR Part 51; or by a test method specified in an approved state implementation plan.

(77) Petroleum refinery--Any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of crude oil, or through the redistillation, cracking, extraction, reforming, or other processing of unfinished petroleum derivatives.

(78) PM_{10}--Particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers as measured by a reference method based on 40 Code of Federal Regulations (CFR) Part 50, Appendix J, and designated in accordance with 40 CFR Part 53, or by an equivalent method designated with that Part 53.

(79) PM_{10} emissions--Finely-divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method specified in 40 Code of Federal Regulations Part 51, or by a test method specified in an approved state implementation plan.

(80) Polychlorinated biphenyl compound--A compound subject to 40 Code of Federal Regulations Part 761.

(81) Process or processes--Any action, operation, or treatment embracing chemical, commercial, industrial, or manufacturing factors such as combustion units, kilns, stills, dryers, roasters, and equipment used in connection therewith, and all other methods or forms of manufacturing or processing that may emit smoke, particulate matter, gaseous matter, or visible emissions.

(82) Process weight per hour--"Process weight" is the total weight of all materials introduced or recirculated into any specific process that may cause any discharge of air contaminants into the atmosphere. Solid fuels charged into the process will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not. The "process weight per hour" will be derived by dividing the total process weight by the number of hours in one complete operation from the beginning of any given process to the completion thereof, excluding any time during that the equipment used to conduct the process is idle. For continuous operation, the "process weight per hour" will be derived by dividing the total process weight for a 24-hour period by 24.

(83) Property--All land under common control or ownership coupled with all improvements on such land, and all fixed or movable objects on such land, or any vessel on the waters of this state.

(84) Reasonable further progress--Annual incremental reductions in emissions of the applicable air contaminant that are sufficient to provide for attainment of the applicable national ambient air quality standard in the designated nonattainment areas by the date required in the state implementation plan.

(85) Regulated entity--All regulated units, facilities, equipment, structures, or sources at one street address or location that are owned or operated by the same person. The term includes any property under common ownership or control identified in a permit or used in conjunction with the regulated activity at the same street address or location. Owners or operators of pipelines, gathering lines, and flowlines under common ownership or control in a particular county may be treated as a single regulated entity for purposes of assessment and regulation of emissions events.

(86) Remote reservoir cold solvent cleaning--Any cold solvent cleaning operation in which liquid solvent is pumped to a sink-like work area that drains solvent back into an enclosed container while parts are being cleaned, allowing no solvent to pool in the work area.

(87) Reportable emissions event--Any emissions event that in any 24-hour period, results in an unauthorized emission from any emissions point equal to or in excess of the reportable quantity as defined in this section.

(88) Reportable quantity (RQ)--Is as follows:

(A) for individual air contaminant compounds and specifically listed mixtures by name or Chemical Abstracts Service (CAS) number, either:

(i) the lowest of the quantities:

(I) listed in 40 Code of Federal Regulations (CFR) Part 302, Table 302.4, the column "final RQ";

(II) listed in 40 CFR Part 355, Appendix A, the column "Reportable Quantity"; or

(III) listed as follows:

(-a-) acetaldehyde - 1,000 pounds, except in the Houston-Galveston-Brazoria (HGB) and Beaumont-Port Arthur (BPA) ozone nonattainment areas as defined in paragraph (70)(E)(i) and (iii) of this section, where the RQ must be 100 pounds;

(-b-) butanes (any isomer) - 5,000 pounds;

(-c-) butenes (any isomer, except 1,3-butadiene) - 5,000 pounds, except in the HGB and BPA ozone nonattainment areas as defined in paragraph (70)(E)(i) and (iii) of this section, where the RQ must be 100 pounds;

(-d-) carbon monoxide - 5,000 pounds;

(-e-) 1-chloro-1,1-difluoroethane (HCFC-142b) - 5,000 pounds;

(-f-) chlorodifluoromethane (HCFC-22) - 5,000 pounds;

(-g-) 1-chloro-1-fluoroethane (HCFC-151a) - 5,000 pounds;

(-h-) chlorofluoromethane (HCFC-31) - 5,000 pounds;

(-i-) chloropentafluoroethane (CFC-115) - 5,000 pounds;

(-j-) 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124) - 5,000 pounds;

(-k-) 1-chloro-1,1,2,2 tetrafluoroethane (HCFC-124a) - 5,000 pounds;

(-l-) 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee) - 5,000 pounds;

(-m-) decanes (any isomer) - 5,000 pounds;

(-n-) 1,1-dichloro-1-fluoroethane (HCFC-141b) - 5,000 pounds;

(-o-) 3,3-dichloro-1,1,2,2-pentafluoro-propane (HCFC-225ca) - 5,000 pounds;

(-p-) 1,3-dichloro-1,1,2,2,3-pentafluoro-propane (HCFC-225cb) - 5,000 pounds;

(-q-) 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFR-114) - 5,000 pounds;

(-r-) 1,1-dichlorotetrafluoroethane (CFC-114a) - 5,000 pounds;

(-s-) 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a) - 5,000 pounds;

(-t-) 1,1-difluoroethane (HFC-152a) - 5,000 pounds;

(-u-) difluoromethane (HFC-32) - 5,000 pounds;

(-v-) ethanol - 5,000 pounds;

(-w-) ethylene - 5,000 pounds, except in the HGB and BPA ozone nonattainment areas as defined in paragraph (70)(E)(i) and (iii) of this section, where the RQ must be 100 pounds;

(-x-) ethylfluoride (HFC-161) - 5,000 pounds;

(-y -) 1,1,1,2,3,3,3-heptafluoropropane (HFC-227ea);

(-z-) 1,1,1,3,3,3-hexafluoropropane (HFC-236fa) - 5,000 pounds;

(-aa-) 1,1,1,2,3,3-hexafluoropropane (HFC-236ea) - 5,000 pounds;

(-bb-) hexanes (any isomer) - 5,000 pounds;

(-cc-) isopropyl alcohol - 5,000 pounds;

(-dd-) mineral spirits - 5,000 pounds;

(-ee-) octanes (any isomer) - 5,000 pounds;

(-ff-) oxides of nitrogen - 200 pounds in ozone nonattainment, ozone maintenance, early action compact areas, Nueces County, and San Patricio County, and 5,000 pounds in all other areas of the state, which should be used instead of the RQs for nitrogen oxide and nitrogen dioxide provided in 40 CFR Part 302, Table 302.4, the column "final RQ";

(-gg-) pentachlorofluoroethane (CFR-111) - 5,000 pounds;

(-hh-) 1,1,1,3,3-pentafluorobutane (HFC-365mfc) - 5,000 pounds;

(-ii-) pentafluoroethane (HFC-125) - 5,000 pounds;

(-jj-) 1,1,2,2,3-pentafluoropropane (HFC-245ca) - 5,000 pounds;

(-kk-) 1,1,2,3,3-pentafluoropropane (HFC-245ea) - 5,000 pounds;

(-ll-) 1,1,1,2,3-pentafluoropropane (HFC-245eb) - 5,000 pounds;

(-mm-) 1,1,1,3,3-pentafluoropropane (HFC-245fa) - 5,000 pounds;

(-nn-) pentanes (any isomer) - 5,000 pounds;

(-oo-) propane - 5,000 pounds;

(-pp-) propylene - 5,000 pounds, except in the HGB and BPA ozone nonattainment areas as defined in paragraph (70)(E)(i) and (iii) of this section, where the RQ must be 100 pounds;

(-qq-) 1,1,2,2-terachlorodifluoroethane (CFR -112) - 5,000 pounds;

(-rr-) 1,1,1,2-tetrachlorodifluoroethane (CFC-112a) -5,000 pounds;

(-ss-) 1,1,2,2-tetrafluoroethane (HFC-134) - 5,000 pounds;

(-tt-) 1,1,1,2-tetrafluoroethane (HFC-134a) - 5,000 pounds;

(-uu-) 1,1,2-trichloro-1,2,2-trifluoroethane (CFR-113) - 5,000 pounds;

(-vv-) 1,1,1-trichloro-2,2,2-trilfloroethane (CFC-113a) - 5,000 pounds;

(-ww-) 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123) - 5,000 pounds;

(-xx-) 1,1,1-trifluoroethane (HFC-143a) - 5,000 pounds;

(-yy-) trifluoromethane (HFC-23) - 5,000 pounds; or

(-zz-) toluene - 1,000 pounds, except in the HGB and BPA ozone nonattainment areas as defined in paragraph (70)(E)(i) and (iii) of this section, where the RQ must be 100 pounds;

(ii) if not listed in clause (i) of this subparagraph, 100 pounds;

(B) for mixtures of air contaminant compounds:

(i) where the relative amount of individual air contaminant compounds is known through common process knowledge or prior engineering analysis or testing, any amount of an individual air contaminant compound that equals or exceeds the amount specified in subparagraph (A) of this paragraph;

(ii) where the relative amount of individual air contaminant compounds in subparagraph (A)(i) of this paragraph is not known, any amount of the mixture that equals or exceeds the amount for any single air contaminant compound that is present in the mixture and listed in subparagraph (A)(i) of this paragraph;

(iii) where each of the individual air contaminant compounds listed in subparagraph (A)(i) of this paragraph are known to be less than 0.02% by weight of the mixture, and each of the other individual air contaminant compounds covered by subparagraph (A)(ii) of this paragraph are known to be less than 2.0% by weight of the mixture, any total amount of the mixture of air contaminant compounds greater than or equal to 5,000 pounds; or

(iv) where natural gas excluding carbon dioxide, water, nitrogen, methane, ethane, noble gases, hydrogen, and oxygen or air emissions from crude oil are known to be in an amount greater than or equal to 5,000 pounds or the associated hydrogen sulfide and mercaptans in a total amount greater than 100 pounds, whichever occurs first;

(C) for opacity from boilers and combustion turbines as defined in this section fueled by natural gas, coal, lignite, wood, fuel oil containing hazardous air pollutants at a concentration of less than 0.02% by weight, opacity that is equal to or exceeds 15 additional percentage points above the applicable limit, averaged over a six-minute period. Opacity is the only RQ applicable to boilers and combustion turbines described in this paragraph; or

(D) for facilities where air contaminant compounds are measured directly by a continuous emission monitoring system providing updated readings at a minimum 15-minute interval an amount,

approved by the executive director based on any relevant conditions and a screening model, that would be reported prior to ground level concentrations reaching at any distance beyond the closest regulated entity property line:

(i) less than one-half of any applicable ambient air standards; and

(ii) less than two times the concentration of applicable air emission limitations.

(89) Rubbish--Nonputrescible solid waste, consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials. Noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and like materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

(90) Scheduled maintenance, startup, or shutdown activity--For activities with unauthorized emissions that are expected to exceed a reportable quantity (RQ), a scheduled maintenance, startup, or shutdown activity is an activity that the owner or operator of the regulated entity whether performing or otherwise affected by the activity, provides prior notice and a final report as required by §101.211 of this title (relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements); the notice or final report includes the information required in §101.211 of this title; and the actual unauthorized emissions from the activity do not exceed the emissions estimates submitted in the initial notification by more than an RQ. For activities with unauthorized emissions that are not expected to, and do not, exceed an RQ, a scheduled maintenance, startup, or shutdown activity is one that is recorded as required by §101.211 of this title. Expected excess opacity events as described in §101.201(e) of this title (relating to Emissions Event Reporting and Recordkeeping Requirements) resulting from scheduled maintenance, startup, or shutdown activities are those that provide prior notice (if required), and are recorded and reported as required by §101.211 of this title.

(91) Sludge--Any solid or semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant; water supply treatment plant, exclusive of the treated effluent from a wastewater treatment plant; or air pollution control equipment.

(92) Smoke--Small gas-born particles resulting from incomplete combustion consisting predominately of carbon and other combustible material and present in sufficient quantity to be visible.

(93) Solid waste--Garbage, rubbish, refuse, sludge from a waste water treatment plant, water supply treatment plant, or air pollution control equipment, and other discarded material, including solid, liquid, semisolid, or containerized gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

(A) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under the Texas Water Code, Chapter 26;

(B) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land, if the object of the fill is to make the land suitable for the construction of surface improvements; or

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas, or geothermal resources, and other substance or material regulated by the Railroad Commission of Texas under Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by Resource Conservation and Recovery Act, as amended (42 United States Code, §§6901 *et seq*.).

(94) Sour crude--A crude oil that will emit a sour gas when in equilibrium at atmospheric pressure.

(95) Sour gas--Any natural gas containing more than 1.5 grains of hydrogen sulfide per 100 cubic feet, or more than 30 grains of total sulfur per 100 cubic feet.

(96) Source--A point of origin of air contaminants, whether privately or publicly owned or operated. Upon request of a source owner, the executive director shall determine whether multiple processes emitting air contaminants from a single point of emission will be treated as a single source or as multiple sources.

(97) Special waste from health care-related facilities--A solid waste that if improperly treated or handled, may serve to transmit infectious disease(s) and that is comprised of the following: animal waste, bulk blood and blood products, microbiological waste, pathological waste, and sharps.

(98) Standard conditions--A condition at a temperature of 68 degrees Fahrenheit (20 degrees Centigrade) and a pressure of 14.7 pounds per square inch absolute (101.3 kiloPascals).

(99) Standard metropolitan statistical area--An area consisting of a county or one or more contiguous counties that is officially so designated by the United States Bureau of the Budget.

(100) Submerged fill pipe--A fill pipe that extends from the top of a tank to have a maximum clearance of six inches (15.2 centimeters) from the bottom or, when applied to a tank that is loaded from the side, that has a discharge opening entirely submerged when the pipe used to withdraw liquid from the tank can no longer withdraw liquid in normal operation.

(101) Sulfur compounds--All inorganic or organic chemicals having an atom or atoms of sulfur in their chemical structure.

(102) Sulfuric acid mist/sulfuric acid--Emissions of sulfuric acid mist and sulfuric acid are considered to be the same air contaminant calculated as H_2SO_4 and must include sulfuric acid liquid mist, sulfur trioxide, and sulfuric acid vapor as measured by Test Method 8 in 40 Code of Federal Regulations Part 60, Appendix A.

(103) Sweet crude oil and gas--Those crude petroleum hydrocarbons that are not "sour" as defined in this section.

(104) Total suspended particulate--Particulate matter as measured by the method described in 40 Code of Federal Regulations Part 50, Appendix B.

(105) Transfer efficiency--The amount of coating solids deposited onto the surface or a part of product divided by the total amount of coating solids delivered to the coating application system.

(106) True vapor pressure--The absolute aggregate partial vapor pressure, measured in pounds per square inch absolute, of all volatile organic compounds at the temperature of storage, handling, or processing.

(107) Unauthorized emissions--Emissions of any air contaminant except carbon dioxide, water, nitrogen, methane, ethane, no-

ble gases, hydrogen, and oxygen that exceed any air emission limitation in a permit, rule, or order of the commission or as authorized by Texas Clean Air Act, §382.0518(g).

(108) Unplanned maintenance, startup, or shutdown activity--For activities with unauthorized emissions that are expected to exceed a reportable quantity or with excess opacity, an unplanned maintenance, startup, or shutdown activity is:

(A) a startup or shutdown that was not part of normal or routine facility operations, is unpredictable as to timing, and is not the type of event normally authorized by permit; or

(B) a maintenance activity that arises from sudden and unforeseeable events beyond the control of the operator that requires the immediate corrective action to minimize or avoid an upset or malfunction.

(109) Upset event--An unplanned and unavoidable breakdown or excursion of a process or operation that results in unauthorized emissions. A maintenance, startup, or shutdown activity that was reported under §101.211 of this title (relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements), but had emissions that exceeded the reported amount by more than a reportable quantity due to an unplanned and unavoidable breakdown or excursion of a process or operation is an upset event.

(110) Utility boiler--A boiler used to produce electric power, steam, or heated or cooled air, or other gases or fluids for sale.

(111) Vapor combustor--A partially enclosed combustion device used to destroy volatile organic compounds by smokeless combustion without extracting energy in the form of process heat or steam. The combustion flame may be partially visible, but at no time does the device operate with an uncontrolled flame. Auxiliary fuel and/or a flame air control damping system that can operate at all times to control the air/fuel mixture to the combustor's flame zone, may be required to ensure smokeless combustion during operation.

(112) Vapor-mounted seal--A primary seal mounted so there is an annular space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the liquid surface, and the floating roof or cover.

(113) Vent--Any duct, stack, chimney, flue, conduit, or other device used to conduct air contaminants into the atmosphere.

(114) Visible emissions--Particulate or gaseous matter that can be detected by the human eye. The radiant energy from an open flame is not considered a visible emission under this definition.

(115) Volatile organic compound--As defined in 40 Code of Federal Regulations §51.100(s), except §51.100(s)(2) - (4), as amended on November 29, 2004 (69 FR 69290).

(116) Volatile organic compound (VOC) water separator--Any tank, box, sump, or other container in which any VOC, floating on or contained in water entering such tank, box, sump, or other container, is physically separated and removed from such water prior to outfall, drainage, or recovery of such water.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 27, 2007.

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: August 16, 2007

Proposal publication date: February 23, 2007

For further information, please call: (512) 239-6087

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30 TAC §101.22

STATUTORY AUTHORITY

The repealed section is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the Texas Water Code; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repealed section is also adopted under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air.

The repealed section implements THSC, §§382.002, 382.011, 382.012, and 382.017.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER H. EMISSIONS BANKING AND TRADING

DIVISION 1. EMISSION CREDIT BANKING AND TRADING

30 TAC §101.302, §101.306

STATUTORY AUTHORITY

The amended sections are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the Texas Water Code; TWC, §5.103, concerning Rules, that

authorizes the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended sections are also adopted under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The amended sections are also adopted under THSC, §382.014, concerning Emission Inventory, that authorizes the commission to require a person whose activities cause air contaminant emissions to submit information to enable the commission to develop an emissions inventory; and §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions. The amended sections are also adopted under 42 United States Code, §7410(a)(2)(A), that requires SIPs to include enforceable measures or techniques, including economic incentives such as fees, marketable permits, and auction of emission rights.

The amended sections implement THSC, §§382.002, 382.011, 382.012, 382.014, 382.016, and 382.017.

§101.302. General Provisions.

(a) Applicable pollutants. Reductions of criteria pollutants, excluding lead, or precursors of criteria pollutants for which an area is designated nonattainment, may qualify as emission credits. Reductions of one pollutant may not be used to meet the requirements for another pollutant, unless urban airshed modeling demonstrates that one ozone precursor may be substituted for another, subject to executive director and United States Environmental Protection Agency (EPA) approval.

(b) Eligible generator categories. The following categories are eligible to generate emission credits:

(1) facilities, including area sources;

(2) mobile sources; and

(3) any facility, including area sources, or mobile source associated with actions by federal agencies under §101.30 of this title (relating to Conformity of General Federal Actions to State Implementation Plans).

(c) Emission credit requirements.

(1) Emission reduction credits are certified reductions that meet the following requirements:

(A) reductions must be enforceable, permanent, quantifiable, real, and surplus;

(B) the certified reduction must be surplus at the time it is created, as well as when it is used;

(C) in order to become certified, the reduction must have occurred after the most recent year of emissions inventory used in the state implementation plan (SIP); and

(D) the facility's annual emissions prior to the reduction strategy must have been reported or represented in the emissions inventory used in the SIP.

(2) Mobile emission reduction credits are certified reductions that meet the following requirements:

(A) reductions must be enforceable, permanent, quantifiable, real, and surplus;

(B) the certified reduction must be surplus at the time it is created, as well as when it is used;

(C) in order to become certified, the reduction must have occurred after the most recent year of emissions inventory used in the SIP;

(D) the mobile source's annual emissions prior to the emission credit application must have been represented in the emissions inventory used in the SIP; and

(E) the mobile sources must have been included in the attainment demonstration baseline emissions inventory.

(3) Emission reductions from a facility or mobile source that are certified as emission credits under this division cannot be recertified in whole or in part as credits under another division within this subchapter.

(d) Protocol.

(1) All generators or users of emission credits shall use a protocol that has been submitted by the executive director to the EPA for approval, if existing for the applicable facility or mobile source, to measure and calculate baseline emissions. If the generator or user wishes to deviate from a protocol submitted by the executive director, EPA approval is required before the protocol can be used. Protocols must be used as follows.

(A) Facilities subject to the emission specifications under §§117.110, 117.210, 117.310, 117.410, 117.1010, 117.1110, 117.1210, 117.1310, 117.2010, or 117.2110 of this title (relating to Emission Specifications for Attainment Demonstration; Emission Specifications for Eight-Hour Attainment Demonstration; and Emission Specifications) shall quantify reductions in nitrogen oxide emissions using the testing and monitoring methodologies identified to show compliance with the emission specification.

(B) Facilities subject to the requirements under §§115.112, 115.121, 115.122, 115.162, 115.211, 115.212, 115.352, 115.421, 115.541, or 115.542 of this title (relating to Control Requirements; and Emission Specifications) shall quantify volatile organic compound reductions using the testing and monitoring methodologies identified to show compliance with the emission specifications or requirements.

(C) If the executive director has not submitted a protocol for the applicable facility or mobile source to the EPA for approval, the following requirements apply:

(i) the amount of emission credits from a facility or mobile source, in tons per year, will be determined and certified based on quantification methodologies at least as stringent as the methods used to demonstrate compliance with any applicable requirements for the facility or mobile source;

(ii) the generator shall collect relevant data sufficient to characterize the facility's or mobile source's emissions of the affected pollutant and the facility's or mobile source's activity level for all representative phases of operation in order to characterize the facility's or mobile source's baseline emissions;

(iii) facilities with continuous emissions monitoring systems or predictive emissions monitoring systems in place shall use this data in quantifying actual emissions;

(iv) the chosen quantification protocol must be made available for public comment for a period of 30 days and must be viewable on the commission's Web site;

(v) the chosen quantification protocol and any comments received during the public comment period shall be submitted to the EPA for a 45-day adequacy review; and

(vi) quantification protocols shall not be accepted for use with this division if the executive director receives a letter objecting to the use of the protocol from the EPA during the 45-day adequacy review or the EPA adopts disapproval of the protocol in the *Federal Register*.

(2) In the event that the monitoring and testing data required under paragraph (1) of this subsection is missing or unavailable, the facility may report actual emissions for that period of time using these listed methods in the following order of preference to determine actual emissions:

(A) continuous monitoring data;

(B) periodic monitoring data;

(C) testing data;

(D) manufacturer's data;

(E) *EPA Compilation of Air Pollution Emission Factors* (AP-42), September 2000; or

(F) material balance.

(3) When quantifying actual emissions in accordance with paragraph (2) of this subsection, the generator shall use the most conservative method for replacing the missing data, submit the justification for not using the methods in paragraph (1) of this subsection, and submit the justification for the method used.

(e) Credit certification.

(1) The amount of emission credits in tons per year will be determined and certified, to the nearest tenth of a ton per year.

(2) Applications for certification will be reviewed in order to determine the credibility of the reductions. Reductions determined to be creditable will be certified by the executive director.

(3) The applicant will be notified in writing if the executive director denies the emission credit application. The applicant may submit a revised application in accordance with the requirements of this division.

(4) If a facility's or mobile source's actual emissions exceed its allowable emission limit, reductions of emissions exceeding the limit may not be certified as emission credits.

(5) Applications for certification of emission credit from reductions quantified under subsection (d)(1)(C) of this section may only be approved upon completion of the public comment period.

(f) Geographic scope. Except as provided in §101.305 of this title (relating to Emission Reductions Achieved Outside the United States), only emission reductions generated in nonattainment areas can be certified. An emission credit must be used in the nonattainment area in which it is generated unless the user has obtained prior written approval of the executive director and the EPA; and

(1) a demonstration has been made and approved by the executive director and the EPA to show that the emission reductions achieved in another county or state provide an improvement to the air quality in the county of use; or

(2) the emission credit was generated in a nonattainment area that has an equal or higher nonattainment classification than the nonattainment area of use, and a demonstration has been made and approved by the executive director and the EPA to show that the emissions from the nonattainment area where the emission credit is generated contribute to a violation of the national ambient air quality standard in the nonattainment area of use.

(g) Recordkeeping. The generator shall maintain a copy of all notices and backup information submitted to the registry for a minimum of five years. The user shall maintain a copy of all notices and backup information submitted to the credit registry from the beginning of the use period and for at least five years after. The user shall also make such records available upon request to representatives of the executive director, EPA, and any local enforcement agency. The records must include, but not necessarily be limited to:

(1) the name, emission point number, and facility identification number of each facility or any other identifying number for each mobile source using emission credits;

(2) the amount of emission credits being used by each facility or mobile source; and

(3) the specific number, name, or other identification of emission credits used for each facility or mobile source.

(h) Public information. All information submitted with notices, reports, and trades regarding the nature, quantity, and sales price of emissions associated with the use, generation, and transfer of an emission credit is public information and may not be submitted as confidential. Any claim of confidentiality for this type of information, or failure to submit all information, may result in the rejection of the emission credit application. All nonconfidential notices and information regarding the generation, availability, use, and transfer of emission credits shall be immediately made available to the public.

(i) Authorization to emit. An emission credit created under this division is a limited authorization to emit the pollutants identified in subsection (a) of this section, unless otherwise defined, in accordance with the provisions of this section, 42 United States Code, §§7401 *et seq*., and Texas Health and Safety Code, Chapter 382, as well as regulations promulgated thereunder. An emission credit does not constitute a property right. Nothing in this division may be construed to limit the authority of the commission or the EPA to terminate or limit such authorization.

(j) Program participation. The executive director has the authority to prohibit an organization from participating in emission credit trading either as a generator or user, if the executive director determines that the organization has violated the requirements of the program, or abused the privileges provided by the program.

(k) Compliance burden. Users may not transfer their compliance burden and legal responsibilities to a third-party participant. Third-party participants may only act in an advisory capacity to the user.

(l) Credit ownership. The owner of the initial emission credit certificate shall be the owner or operator of the facility or mobile source creating the emission reduction. The executive director may approve a deviation from this subsection considering factors such as, but not limited to:

(1) whether an entity other than the owner or operator of the facility or mobile source incurred the cost of the emission reduction strategy; or

(2) whether the owner or operator of the facility or mobile source lacks the potential to generate 1/10 ton of credit.

§101.306. Emission Credit Use.

(a) Uses for emission credits. Unless precluded by a commission order or a condition or conditions within an authorization under the same commission account number, emission credits may be used as the following:

(1) offsets for a new source, as defined in §101.1 of this title (related to Definitions), or major modification to an existing source;

(2) mitigation offsets for action by federal agencies under §101.30 of this title (relating to Conformity of General Federal Actions to State Implementation Plans);

(3) an alternative means of compliance with volatile organic compound and nitrogen oxides reduction requirements to the extent allowed in Chapters 114, 115, and 117 of this title (relating to Control of Air Pollution from Motor Vehicles; Control of Air Pollution from Volatile Organic Compounds; and Control of Air Pollution from Nitrogen Compounds);

(4) reductions certified as emission credits may be used in netting by the original applicant, if not used, sold, reserved for use, or otherwise relied upon, as provided in §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Areas);

(5) an annual allocation of allowances as provided in §101.356 and §101.399 of this title (relating to Allowance Banking and Trading);

(6) compliance with motor vehicle fleet requirements to the extent allowed by §114.201 of this title (relating to Mobile Emission Reduction Credit Program); or

(7) compliance with other requirements as allowable within the guidelines of local, state, and federal laws.

(b) Credit use calculation.

(1) The number of emission credits needed by the user for offsets shall be determined as provided in §116.150 of this title.

(2) For emission credits used in compliance with Chapters 114, 115, or 117 of this title, the number of emission credits needed should be determined according to the following equation plus an additional 10% to be retired as an environmental contribution.
Figure: 30 TAC §101.306(b)(2) (No change.)

(3) For emission credits used to comply with §§117.123, 117.223, 117.320, 117.323, 117.423, 117.1020, 117.1120, or 117.1220 of this title (relating to Source Cap; and System Cap), the number of emission credits needed for increasing the 30-day rolling average emission cap or maximum daily cap should be determined according to the following equation plus an additional 10% to be retired as an environmental contribution.
Figure: 30 TAC §101.306(b)(3)

(4) Emission credits used for compliance with any other applicable program should be determined in accordance with the requirements of that program and must contain at least 10% extra to be retired as an environmental contribution, unless otherwise specified by that program.

(c) Notice of intent to use emission credits.

(1) For emission credits which are to be used as offsets in a New Source Review permit in accordance with Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), the emission credits must be identified prior to permit issuance. Prior to construction, the offsets must be provided through submittal of a completed EC-3 Form, Notice of Intent to Use Emission Credits, along with the original emission credit certificate.

(2) For emission credits that are to be used for compliance with the requirements of Chapters 114, 115, or 117 of this title or other programs, the user must submit a completed EC-3 Form along with the original emission credit certificate, at least 90 days prior to the planned use of the emission credit. Emission credits may be used only after the executive director grants approval of the notice of intent to use. The user must also keep a copy of the emission credit certificate, the notice, and all backup in accordance with §101.302(g) of this title (relating to General Provisions).

(3) If the executive director denies the facility or mobile source's use of emission credits, any affected person by the executive director's decision may file a motion for reconsideration within 60 days of the denial. Notwithstanding the applicability provisions of §50.31(c)(7) of this title (relating to Purpose and Applicability), the requirements of §50.39 of this title (relating to Motion for Reconsideration) shall apply. Only an affected person may file a motion for reconsideration.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Robert Martinez
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DIVISION 3. MASS EMISSIONS CAP AND TRADE PROGRAM

30 TAC §§101.350, 101.351, 101.353, 101.354, 101.360

STATUTORY AUTHORITY

The amended sections are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the Texas Water Code; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended sections are also adopted under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The amended sections are also adopted un-

der THSC, §382.014, concerning Emission Inventory, that authorizes the commission to require a person whose activities cause air contaminant emissions to submit information to enable the commission to develop an emissions inventory; and §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions. The amended sections are also adopted under 42 United States Code, §7410(a)(2)(A), that requires SIPs to include enforceable measures or techniques, including economic incentives such as fees, marketable permits, and auction of emission rights.

The amended sections implement THSC, §§382.002, 382.011, 382.012, 382.014, 382.016, and 382.017.

§101.353. Allocation of Allowances.

(a) Allowances will be deposited into compliance accounts according to the following equation except as provided in subsection (b) or (h) of this section.
Figure: 30 TAC §101.353(a)

(b) For a new and/or modified facility that has submitted, under Chapter 116 of this title (relating to Control of Air Pollution by Permit for New Construction of Modification), an application which the executive director has not determined to be administratively complete before January 2, 2001, or has qualified for a permit by rule under Chapter 106 of this title (relating to Permits by Rule) and has not commenced construction before January 2, 2001, allowances for each control period or the annual allocation rights shall be acquired from facilities already participating under this division, or in accordance with §101.356(g) of this title (relating to Allowance Banking and Trading).

(c) If actual emissions of nitrogen oxides during a control period exceed the amount of allowances held in a compliance account on March 1 following the control period, allowances for the next control period will be reduced by an amount equal to the emissions exceeding the allowances in the compliance account plus an additional 10%. This does not preclude additional enforcement action by the executive director.

(d) Allowances will be allocated by the executive director, who will deposit allowances into each compliance account:

(1) initially, by January 1, 2002; and

(2) subsequently, by January 1 of each following year.

(e) The annual deposit for any control period may be adjusted by the executive director to reflect new or existing state implementation plan requirements.

(f) Allowances may be added or deducted by the executive director from compliance accounts following the review of reports required under §101.359 of this title (relating to Reporting).

(g) The owner or operator of a facility may, due to extenuating circumstances, request a baseline period more representative of normal operation as determined by the executive director. Applications for extenuating circumstances must be submitted by the owner or operator of the facility to the executive director:

(1) no later than June 30, 2001 to request an alternative three consecutive calendar year period for facilities in operation prior to January 1, 1997;

(2) no later than 90 days after completion of the baseline period to request up to two additional calendar years to establish a baseline period for facilities whose baseline as described by variable (2)(C) listed in the figure contained in subsection (a) of this section is not complete by June 30, 2001; or

(3) at any time as authorized by the executive director.

(h) Allowances calculated under subsection (a) of this section will continue to be based on historical activity levels, despite subsequent reductions in activity levels. If allowances are being allocated based on allowables and the facility does not achieve two complete consecutive calendar years of actual level of activity data, then allowances will not continue to be allocated if the facility ceases operation or is not built.

§101.354. Allowance Deductions.

(a) Allowances will be deducted in tenths of a ton from a site's compliance account for a control period based upon the monitoring and testing protocols established in §§117.335, 117.340, 117.1235, 117.1240, and 117.2035 of this title (relating to Initial Demonstration of Compliance; Continuous Demonstration of Compliance; and Monitoring and Testing Requirements).

(b) In the event that the monitoring and testing data required under subsection (a) of this section is missing or unavailable, the facility may report actual emissions for that period of time using the following equation or other listed methods in the following order to determine actual emissions: continuous monitoring data; periodic monitoring data; testing data; manufacturer's data, and *EPA Compilation of Air Pollution Emission Factors* (AP-42), September 2000. When reporting actual emissions as required under this subsection, the facility must also submit the justification for not using the methods in subsection (a) of this section and the justification for the method used.
Figure: 30 TAC §101.354(b) (No change.)

(c) If the protocol used to show compliance with this section differs from the protocol used by the commission to establish the allocation of allowances under §101.353 of this title (relating to Allocation of Allowances), the executive director may recalculate the number of allowances allocated per year for consistency between the methods.

(d) When deducting allowances from a site's compliance account for a control period, the executive director will deduct the allowances beginning with the most recently allocated allowances before deducting banked allowances.

(e) Allowances shall be deducted from a site's compliance account in an amount equal to the nitrogen oxides (NO_x) emissions increases from facilities not subject to an emission specification under §117.310 or §117.2010 of this title (relating to Emission Specifications for Attainment Demonstration; and Emission Specifications) which result from changes made after December 31, 2000, to facilities subject to this division and §117.310(e)(3) or §117.2010(f) of this title. Documentation detailing these increases in NO_x emissions shall be included with the submittal of the ECT-1 Form, Annual Compliance Report.

(f) Allowances allocated in accordance with the variables in (a)(2)(B) listed in the figure contained in §101.353(a) of this title may only be used by the facility for which they were allocated and may not be used by other facilities at the same site during the same control period.

(g) On March 1 after every control period, a site shall hold a quantity of allowances in its compliance account that is equal to or greater than the total NO_x emissions emitted during the prior control period.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 4. DISCRETE EMISSION CREDIT BANKING AND TRADING

30 TAC §101.372, §101.376

STATUTORY AUTHORITY

The amended sections are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the Texas Water Code; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended sections are also adopted under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The amended sections are also adopted under THSC, §382.014, concerning Emission Inventory, that authorizes the commission to require a person whose activities cause air contaminant emissions to submit information to enable the commission to develop an emissions inventory; and §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions. The amended sections are also adopted under 42 United States Code, §7410(a)(2)(A), that requires SIPs to include enforceable measures or techniques, including economic incentives such as fees, marketable permits, and auction of emission rights.

The amended sections implement THSC, §§382.002, 382.011, 382.012, 382.014, 382.016, and 382.017.

§101.376. Discrete Emission Credit Use.

(a) Requirements to use discrete emission credits. Discrete emission credits may be used if the following requirements are met.

(1) The user shall have ownership of a sufficient amount of discrete emission credits before the use period for which the specific discrete emission credits are to be used.

(2) The user shall hold sufficient discrete emission credits to cover the user's compliance obligation at all times.

(3) The user shall acquire additional discrete emission credits during the use period if it is determined the user does not possess enough discrete emission credits to cover the entire use period. The user shall acquire additional credits as allowed under this section prior to the shortfall, or be in violation of this section.

(4) Facility or mobile source operators may acquire and use only discrete emission credits listed on the registry.

(b) Use of discrete emission credits. With the exception of uses prohibited in subsection (c) of this section or precluded by commission order or condition within an authorization under the same commission account number, discrete emission credits may be used to meet or demonstrate compliance with any facility or mobile regulatory requirement including the following:

(1) to exceed any allowable emission level, if the following conditions are met:

(A) in ozone nonattainment areas, permitted facilities may use discrete emission credits to exceed permit allowables by no more than ten tons for nitrogen oxides or five tons for volatile organic compounds in a 12-month period as approved by the executive director. This use is limited to one exceedance, up to 12 months within any 24-month period, per use strategy. The user shall demonstrate that there will be no adverse impacts from the use of discrete emission credits at the levels requested; or

(B) at permitted facilities in counties or portions of counties designated as attainment or unclassified, discrete emission credits may be used to exceed permit allowables by values not to exceed the prevention of significant deterioration significance levels as provided in 40 Code of Federal Regulations (CFR) §52.21(b)(23), as approved by the executive director prior to use. This use is limited to one exceedance, up to 12 months within any 24-month period, per use strategy. The user shall demonstrate that there will be no adverse impacts from the use of discrete emission credits at the levels requested;

(2) as new source review (NSR) permit offsets, if the following requirements are met:

(A) the user shall obtain the executive director's approval prior to the use of specific discrete emission credits to cover, at a minimum, one year of operation of the new or modified facility in the NSR permit;

(B) the amount of discrete emission credits needed for NSR offsets equals the quantity of tons needed to achieve the maximum allowable emission level set in the user's NSR permit. The user shall also purchase and retire enough discrete emission credits to meet the offset ratio requirement in the user's ozone nonattainment area. The user shall purchase and retire either the environmental contribution of 10% or the offset ratio, whichever is higher; and

(C) the NSR permit must meet the following requirements:

(i) the permit must contain an enforceable requirement that the facility obtain at least one additional year of offsets before continuing operation in each subsequent year;

(ii) prior to issuance of the permit the user shall identify the discrete emission credits; and

(iii) prior to start of operation the user shall submit a completed DEC-2 Form, Notice of Intent to Use Discrete Emission Credits, along with the original certificate;

(3) to comply with the Mass Emissions Cap and Trade Program requirements as provided in §101.356(g) of this title (relating to Allowance Banking and Trading); or

(4) to comply with Chapters 114, 115, and 117 of this title (relating to Control of Air Pollution from Motor Vehicles; Control of Air Pollution from Volatile Organic Compounds; and Control of Air Pollution from Nitrogen Compounds), as allowed.

(c) Discrete emission credit use prohibitions. A discrete emission credit may not be used under this division:

(1) before it has been acquired by the user;

(2) for netting to avoid the applicability of federal and state NSR requirements;

(3) to meet (as codified in 42 United States Code (USC), Federal Clean Air Act (FCAA)) requirements for:

(A) new source performance standards under FCAA, §111 (42 USC, §7411);

(B) lowest achievable emission rate standards under FCAA, §173(a)(2) (42 USC, §7503(a)(2));

(C) best available control technology standards under FCAA, §165(a)(4) (42 USC, §7475(a)(4)) or Texas Health and Safety Code, §382.0518(b)(1);

(D) hazardous air pollutants standards under FCAA, §112 (42 USC, §7412), including the requirements for maximum achievable control technology;

(E) standards for solid waste combustion under FCAA, §129 (42 USC, §7429);

(F) requirements for a vehicle inspection and maintenance program under FCAA, §182(b)(4) or (c)(3) (42 USC, §7511a(b)(4) or (c)(3));

(G) ozone control standards set under FCAA, §183(e) and (f) (42 USC, §7511b(e) and (f));

(H) clean-fueled vehicle requirements under FCAA, §246 (42 USC, §7586);

(I) motor vehicle emissions standards under FCAA, §202 (42 USC, §7521);

(J) standards for non-road vehicles under FCAA, §213 (42 USC, §7547);

(K) requirements for reformulated gasoline under FCAA, §211(k) (42 USC, §7545); or

(L) requirements for Reid vapor pressure standards under FCAA, §211(h) and (i) (42 USC, §7545(h) and (i));

(4) to allow an emissions increase of an air contaminant above a level authorized in a permit or other authorization that exceeds the limitations of §106.261 or §106.262 of this title (relating to Facilities (Emission Limitations); and Facilities (Emission and Distance Limitations)) except as approved by the executive director and the United States Environmental Protection Agency. This paragraph does not apply to limit the use of discrete emission reduction credits (DERC) or mobile discrete emission reduction credits in lieu of allowances under §101.356(h) of this title;

(5) to authorize a facility whose emissions are enforceably limited to below applicable major source threshold levels, as defined in §122.10 of this title (relating to General Definitions), to operate with actual emissions above those levels without triggering applicable requirements that would otherwise be triggered by such major source status; or

(6) to exceed an allowable emission level where the exceedance would cause or contribute to a condition of air pollution as determined by the executive director.

(d) Notice of intent to use.

(1) A completed DEC-2 Form, signed by an authorized representative of the applicant shall be submitted to the executive director in accordance with the following requirements.

(A) Discrete emission credits may be used only after the applicant has submitted the notice and received executive director approval.

(B) The application must be submitted at least 45 days prior to the first day of the use period if the discrete emission credits were generated from a facility, 90 days if the discrete emission credits were generated from a mobile source, and every 12 months thereafter for each subsequent year if the use period exceeds 12 months.

(C) A copy of the application shall also be sent to the federal land manager 30 days prior to use if the user is located within 100 kilometers of a Class I area, as listed in 40 CFR Part 81 (2001).

(D) The application must include, but is not limited to, the following information for each use:

(i) the applicable state and federal requirements that the discrete emission credits will be used to comply with and the intended use period;

(ii) the amount of discrete emission credits needed;

(iii) the baseline emission rate, activity level, and total emissions for the applicable facility or mobile source;

(iv) the actual emission rate, activity level, and total emissions for the applicable facility or mobile source;

(v) the most stringent emission rate and the most stringent emission level for the applicable facility or mobile source, considering all applicable regulatory requirements;

(vi) a complete description of the protocol, as submitted by the executive director to the United States Environmental Protection Agency for approval, used to calculate the amount of discrete emission credits needed;

(vii) the actual calculations performed by the user to determine the amount of discrete emission credits needed;

(viii) the date that the discrete emission credits were acquired or will be acquired;

(ix) the discrete emission credit generator and the original certificate of the discrete emission credits acquired or to be acquired;

(x) the price of the discrete emission credits acquired or the expected price of the discrete emission credits to be acquired, except for transfers between sites under common ownership or control;

(xi) a statement that due diligence was taken to verify that the discrete emission credits were not previously used, the discrete emission credits were not generated as a result of actions prohibited under this regulation, and the discrete emission credits will not be used in a manner prohibited under this regulation; and

(xii) a certification of use, that must contain certification under penalty of law by a responsible official of the user of truth, accuracy, and completeness. This certification must state that based on

information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

(2) DERC use calculation.

(A) To calculate the amount of discrete emission credits necessary to comply with §§117.123, 117.223, 117.320, 117.323, 117.423, 117.1020, 117.1120, 117.1220, or 117.3020 of this title (relating to Source Cap; and System Cap), a user may use the equations listed in those sections, or the following equations.

(i) For the rolling average cap:
Figure: 30 TAC §101.376(d)(2)(A)(i)

(ii) For maximum daily cap:
Figure: 30 TAC §101.376(d)(2)(A)(ii)

(B) The amount of discrete emission credits needed to demonstrate compliance or meet a regulatory requirement is calculated as follows.
Figure: 30 TAC §101.376(d)(2)(B) (No change.)

(C) The amount of discrete emission credits needed to exceed an allowable emissions level is calculated as follows.
Figure: 30 TAC §101.376(d)(2)(C) (No change.)

(D) The user shall retire 10% more discrete emission credits than are needed, as calculated in this paragraph, to ensure that the facility or mobile source environmental contribution retirement obligation will be met.

(E) If the amount of discrete emission credits needed to meet a regulatory requirement or to demonstrate compliance is greater than ten tons, an additional 5.0% of the discrete emission credits needed, as calculated in this paragraph, must be acquired to ensure that sufficient discrete emission credits are available to the user with an adequate compliance margin.

(3) A user may submit a notice late in the case of an emergency, but the notice must be submitted before the discrete emission credits can be used. The user shall include a complete description of the emergency situation in the notice of intent to use. All other notices submitted less than 45 days prior to use, or 90 days prior to use for a mobile source, will be considered late and in violation.

(4) The user is responsible for determining the credits it will purchase and notifying the executive director of the selected generating facility or mobile source in the notice of intent to use. If the generator's credits are rejected or the notice of generation is incomplete, the use of discrete emission credits by the user may be delayed by the executive director. The user cannot use any discrete emission credits that have not been certified by the executive director. The executive director may reject the use of discrete emission credits by a facility or mobile source if the credit and use cannot be demonstrated to meet the requirements of this section.

(5) If the facility is in an area with an ozone season less than 12 months, the user shall calculate the amount of discrete emission credits needed for the ozone season separately from the non-ozone season.

(e) Notice of use.

(1) The user shall calculate:

(A) the amount of discrete emission credits used, including the amount of discrete emission credits retired to cover the environmental contribution, as described in subsection (d)(2)(C) of this section, associated with actual use; and

(B) the amount of discrete emission credits not used, including the amount of excess discrete emission credits that were purchased to cover the environmental contribution, as described in subsection (d)(2)(C) of this section, but not associated with the actual use, and available for future use.

(2) DERC use is calculated by the following equations.

(A) The amount of discrete emission credits used to demonstrate compliance or meet a regulatory requirement is calculated as follows.
Figure: 30 TAC §101.376(e)(2)(A) (No change.)

(B) The amount of discrete emission credits used to comply with permit allowables is calculated as follows.
Figure: 30 TAC §101.376(e)(2)(B) (No change.)

(3) A DEC-3 Form, Notice of Use of Discrete Emission Credits, shall be submitted to the commission in accordance with the following requirements.

(A) The notice must be submitted within 90 days after the end of the use period.

(B) The notice must be submitted within 90 days of the conclusion of each 12-month use period, if applicable.

(C) The notice is to be used as the mechanism to update or amend the notice of intent to use and must include any information different from that reported in the notice of intent to use, including, but not limited to, the following items:

(i) purchase price of the discrete emission credits obtained prior to the current use period, except for transfers between sites under common ownership or control;

(ii) the actual amount of discrete emission credits possessed during the use period;

(iii) the actual emissions during the use period for volatile organic compounds and nitrogen oxides;

(iv) the actual amount of discrete emission credits used;

(v) the actual environmental contribution; and

(vi) the amount of discrete emission credits available for future use.

(4) Discrete emission credits that are not used during the use period are surplus and remain available for transfer or use by the holder. In addition, any portion of the calculated environmental contribution not attributed to actual use is also available.

(5) The user is in violation of this section if the user submits the report of use later than the allowed 90 days following the conclusion of the use period.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 5. SYSTEM CAP TRADING

30 TAC §101.383, §101.385

STATUTORY AUTHORITY

The amended sections are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the Texas Water Code; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended sections are also adopted under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The amended sections are also adopted under THSC, §382.014, concerning Emission Inventory, that authorizes the commission to require a person whose activities cause air contaminant emissions to submit information to enable the commission to develop an emissions inventory; and §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions. The amended sections are also adopted under 42 United States Code, §7410(a)(2)(A), that requires SIPs to include enforceable measures or techniques, including economic incentives such as fees, marketable permits, and auction of emission rights.

The amended sections implement THSC, §§382.002, 382.011, 382.012, 382.014, 382.016, and 382.017.

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CHAPTER 305. CONSOLIDATED PERMITS

The Texas Commission on Environmental Quality (TCEQ or commission) adopts amendments to §§305.69, 305.175, 305.571, and 305.572. Section 305.69 is adopted *with changes* to the proposed text as published in the March 9, 2007, issue of the *Texas Register* (32 TexReg 1203). Sections 305.175, 305.571, and 305.572 are adopted *without changes* to the proposed text, and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The federal hazardous waste program is authorized under §3001 of the Resource Conservation and Recovery Act (RCRA) of 1976, 42 United States Code, §6921 *et seq*. States may obtain authorization from the United States Environmental Protection Agency (EPA) to administer the hazardous waste program at the state level. State authorization is a rulemaking process through which EPA delegates the primary responsibility of implementing the RCRA hazardous waste program to individual states in lieu of EPA. This process ensures national consistency and minimum standards while providing flexibility to states in implementing rules. State RCRA programs must always be at least as stringent as the federal requirements.

Since the beginning of the federal hazardous waste program, the State of Texas has continuously exercised its prerogative to participate in the EPA's authorization program. Texas received authorization of its hazardous waste "base program" under the RCRA on December 26, 1984. Texas received authorization for revisions to its base hazardous waste program for RCRA Clusters I and II on February 17, 1987. Texas submitted further revisions to its hazardous waste program and received final authorization of RCRA Clusters III through X on March 15, 1990; July 23, 1990; October 21, 1991; December 4, 1992; June 27, 1994; November 26, 1997; October 18, 1999; September 11, 2000; and June 14, 2005.

To maintain authorization, the commission must adopt regulations that meet the minimum standards of federal programs administered by EPA. Because the federal regulations undergo regular revision, the commission adopts new regulations to meet the changing federal regulations. The commission must adopt rule amendments that implement certain mandatory revisions to the federal hazardous waste program, which were made by EPA after June 30, 2000. In order for the State of Texas to maintain its RCRA authorization and continue to receive federal funding for the program, the mandatory federal rule changes in RCRA Clusters XI, XII, XIII, and XV must be incorporated into state rules.

This adopted rulemaking includes the mandatory parts of RCRA Clusters XI, XII, XIII, and XV. Establishing equivalency with federal regulations will enable the State of Texas to increase its level of authorization to operate aspects of the federal hazardous waste program in lieu of the EPA. Additionally, the timely adoption of these federal rules allows the commission to continue receiving special project funding through the EPA Performance Partnership Grant.

The Hazardous Waste Combustion Maximum Achievable Control Technology (MACT) regulations are multi-media at the federal and state level, affecting both air quality and hazardous waste management. The TCEQ has already adopted certain parts of Title 40 Code of Federal Regulations (CFR) Part 63, Subpart EEE (i.e., the Hazardous Waste Combustion MACT rules) prior to this adopted rulemaking under air quality regulations at Title 30, Texas Administrative Code (TAC), Chapter 113. This adopted rulemaking includes other parts of the federal combustion MACT program, which are codified at 40 CFR Parts 264, 265, 266, and 270. The adopted rule changes related to air quality are necessary to be consistent with previously adopted federal requirements.

A corresponding rulemaking is published in this issue of the *Texas Register* and includes changes to 30 TAC Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste.

SECTION BY SECTION DISCUSSION

Section 305.69. Solid Waste Permit Modification at the Request of the Permittee.

The commission adopts an amendment to §305.69(i)(1) to conform to federal regulations promulgated in the May 14, 2001, issue of the *Federal Register* (66 FR 24270) and the February 14, 2002, issue of the *Federal Register* (67 FR 6968). This adopted amendment revises Part B hazardous waste combustion facility permit modification requirements found in 40 CFR §270.42, to meet the emission standards at Part 63, Maximum Achievable Control Technology (MACT).

The adopted amendment revises the Notice of Intent to Comply (NIC) requirements of 40 CFR §63.1210(b) and (c), which are referenced in the permit modification procedures at 40 CFR §270.42 because the Washington D.C. Circuit Court vacated the NIC requirement effective October 11, 2000. Nonetheless, EPA determined that the court vacatur did not impact eligibility for streamlined modification because the court's mandate was not issued until after sources were required to submit their NIC.

The commission also makes changes from proposed language to update two citations and revise a subchapter heading.

§305.175. Conditional Exemption for Demonstrating Compliance with Certain Air Standards.

The commission adopts an amendment to §305.175 to conform to federal regulations promulgated in the December 19, 2002, issue of the *Federal Register* (67 FR 77687). This adopted amendment adds language that specifies information requirements for Part B of the application for a hazardous waste permit found in 40 CFR §270.19 for air emission controls for incinerators. This adopted amendment corrects two technical errors in the requirements of the NESHAP Direct Final Rule, Interim Standards Rule, and Final Amendments Rule.

§305.571. Applicability.

The commission adopts an amendment to §305.571(b) to conform to federal regulations promulgated in the December 19, 2002, issue of the *Federal Register* (67 FR 77687). This adopted amendment adds language that specifies information requirements for Part B of the application for a hazardous waste permit found in 40 CFR §270.22 for air emission controls for boilers and industrial furnaces burning hazardous waste. This adopted amendment corrects two technical errors in the requirements of the NESHAP Direct Final Rule, Interim Standards Rule, and Final Amendments Rule.

§305.572. Permit and Trial Burn Requirements.

The commission adopts an amendment to §305.572(a) to conform to federal regulations promulgated in the December 19, 2002, issue of the *Federal Register* (67 FR 77687). This amendment adopts by reference revisions to the options found in 40 CFR §270.235 for incinerators and cement and lightweight aggregate kilns to minimize air emissions. This adopted amendment corrects two technical errors in the requirements of the NESHAP Direct Final Rule, Interim Standards Rule, and Final Amendments Rule.

The commission adopts an amendment to §305.572(a) by adding paragraph (6) to conform to federal regulations promulgated in the February 14, 2002, issue of the *Federal Register* (67 FR 6792). This amendment adopts by reference revisions to the options found in 40 CFR §270.235(a) and (b) for incinerators and cement and lightweight aggregate kilns to minimize air emissions from startup, shutdown, and malfunction events. This adopted amendment replaces the vacated September 1999 NESHAP emissions standards.

In addition to the changes discussed previously, the commission adopts corrections to outdated citations.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute.

Although the intent of the adopted rulemaking is to protect the environment and reduce the risk to human health from environmental exposure, the rulemaking is not a major environmental rule because it will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. There is no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state because 42 United States Code (USC), §6926(g), already imposes the more stringent federal requirements on the regulated community under the Hazardous and Solid Waste Amendments of 1984. The regulated community must comply with the more stringent federal requirements beginning on the effective date of the federal regulations.

Because the regulated community is already required to comply with the more stringent federal rules, the adopted equivalent state rules will not cause any adverse effects. There is no adverse effect in a material way on the environment, or the public health and safety of the state or a sector of the state because the adopted rulemaking is designed to protect the environment, the public health, and the public safety of the state and all sectors of the state. Because the adopted rulemaking does not have an adverse material impact on the economy, the rulemaking does not meet the definition of a major environmental rule. Furthermore, the rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a).

First, the adopted rulemaking does not exceed a standard set by federal law because the commission adopts this rulemaking to implement revisions to the federal hazardous waste program. The commission must meet the minimum standards and mandatory requirements of the federal program to maintain authorization of the state hazardous waste program.

Second, although the adopted rulemaking contains some requirements that are more stringent than existing state rules, federal law requires the commission to promulgate rules that are as stringent as federal law for the commission to maintain authorization of the state hazardous waste program.

Third, the adopted rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government, where the delegation agreement or contract is to implement a state and federal program. On the contrary, the commission must undertake the rulemaking to maintain authorization of the state hazardous waste program.

And fourth, the adopted rulemaking does not seek to adopt a rule solely under the general powers of the agency instead of under a specific state law. The commission adopts this rulemaking under Texas Water Code (TWC), §5.103 and §5.105 and under Texas Health and Safety Code (THSC), §361.017 and §361.024.

The commission solicited public comment on the draft regulatory impact analysis determination. No comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the rulemaking and performed a preliminary assessment of whether Texas Government Code, Chapter 2007, applies. The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007, does not apply to the rulemaking because this action is reasonably taken to fulfill an obligation mandated by federal law; therefore, this action is exempt under Texas Government Code, §2007.003(b)(4).

The specific purpose of the adopted rulemaking is to maintain state RCRA authorization by proposing state hazardous waste rules that are equivalent to the federal regulations. The rulemaking will substantially advance this purpose by adopting rules that incorporate and refer to the federal regulations.

Promulgation and enforcement of the adopted rules will not be a statutory or constitutional taking of private real property. Specifically, the adopted rulemaking does not affect a landowner's rights in private real property because this rulemaking does not constitutionally burden the owner's right to property, does not restrict or limit the owner's right to property, and does not reduce the value of property by 25% or more beyond that which would otherwise exist in the absence of the regulations.

The adopted rulemaking seeks to meet the minimum standards of federal RCRA regulations that are already in place. 42 USC §6926(g) imposes on the regulated community any federal requirements that are more stringent than current state rules. The regulated community must already have complied with the more stringent federal requirements as of the effective date of the federal regulations. Because the regulated community is already required to comply with the more stringent federal regulations, promulgating equivalent state rules will not burden, restrict, or limit the owner's right to property and will not reduce the value of property by 25% or more.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the adoption is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, or will affect an action and/or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6), and will, therefore, require that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process. The commission prepared a consistency determination for the rule in accordance with 31 TAC §505.22 and found the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to the rulemaking is to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). Applicable policies are construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 USC, §§6901 *et seq*. Promulgation and enforcement of these rules are consistent with the applicable CMP goals and policies because the adopted rule amendments will update and enhance the commission's rules concerning hazardous waste facilities. In addition, the rules do not violate any applicable provisions of the CMP's stated goals and policies.

The commission invited public comment regarding the consistency of the rules with the CMP. No comments were received regarding the consistency of the rules with the CMP.

SUBMITTAL OF COMMENTS

The comment period closed on April 9, 2007. No comments were received.

SUBCHAPTER D. AMENDMENTS, RENEWALS, TRANSFERS, CORRECTIONS, REVOCATION, AND SUSPENSION OF PERMITS

30 TAC §305.69

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state, and under THSC, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendment implements Texas Health and Safety Code, Chapter 361.

§305.69. Solid Waste Permit Modification at the Request of the Permittee.

(a) Applicability. This section applies only to modifications to industrial and hazardous solid waste permits. Modifications to municipal solid waste permits are covered in §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications).

(b) Class I modifications of solid waste permits.

(1) Except as provided in paragraph (2) of this subsection, the permittee may put into effect Class 1 modifications listed in Appendix I of this subchapter under the following conditions:

(A) the permittee must notify the executive director concerning the modification by certified mail or other means that establish proof of delivery within seven calendar days after the change is put into effect. This notification must specify the changes being made to permit conditions or supporting documents referenced by the permit and must explain why they are necessary. Along with the notification, the permittee must provide the applicable information in the form and manner specified in §1.5(d) of this title (relating to Records of the Agency), §§305.41 - 305.45 and 305.47 - 305.53 of this title (relating to Applicability; Application Required; Who Applies; Signatories to Applications; Contents of Application for Permit; Retention of Application Data; Additional Contents of Applications for Wastewater Discharge Permits; Additional Contents of Application for an Injection Well Permit; Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order; Revision of Applications for Hazardous Waste Permits; Waste

Containing Radioactive Materials; and Application Fee), Subchapter I of this chapter (relating to Hazardous Waste Incinerator Permits), and Subchapter J of this chapter (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses);

(B) the permittee must send notice of the modification request by first-class mail to all persons listed in §39.13 of this title (relating to Mailed Notice). This notification must be made within 90 calendar days after the change is put into effect. For the Class 1 modifications that require prior executive director approval, the notification must be made within 90 calendar days after the executive director approves the request; and

(C) any person may request the executive director to review, and the executive director may for cause reject, any Class 1 modification. The executive director must inform the permittee by certified mail that a Class 1 modification has been rejected, explaining the reasons for the rejection. If a Class 1 modification has been rejected, the permittee must comply with the original permit conditions.

(2) Class 1 permit modifications identified in Appendix I of this section by a superscript 1 may be made only with the prior written approval of the executive director.

(3) For a Class 1 permit modification, the permittee may elect to follow the procedures in subsection (c) of this section for Class 2 modifications instead of the Class 1 procedures. The permittee must inform the executive director of this decision in the notification required in subsection (c)(1) of this section.

(c) Class 2 modifications of solid waste permits.

(1) For Class 2 modifications, which are listed in Appendix I of this subchapter, the permittee must submit a modification request to the executive director that:

(A) describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(B) identifies the modification as a Class 2 modification;

(C) explains why the modification is needed; and

(D) provides the applicable information in the form and manner specified in §1.5(d) of this title (relating to Records of the Agency), §§305.41 - 305.45 and 305.47 - 305.53 of this title (relating to Applicability; Application Required; Who Applies; Signatories to Applications; Contents of Application for Permit; Retention of Application Data; Additional Contents of Applications for Wastewater Discharge Permits; Additional Contents of Application for an Injection Well Permit; Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order; Revision of Applications for Hazardous Waste Permits; Waste Containing Radioactive Materials; and Application Fee), Subchapter I of this chapter (relating to Hazardous Waste Incinerator Permits), and Subchapter J of this chapter (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses);

(2) The permittee must send a notice of the modification request by first-class mail to all persons listed in §39.13 of this title (relating to Mailed Notice) and must cause this notice to be published in a major local newspaper of general circulation. This notice must be mailed and published within seven days before or after the date of submission of the modification request, and the permittee must provide to the executive director evidence of the mailing and publication. The notice must include:

(A) announcement of a 60-day comment period, in accordance with paragraph (5) of this subsection, and the name and address of an agency contact to whom comments must be sent;

(B) announcement of the date, time, and place for a public meeting to be held in accordance with paragraph (4) of this subsection;

(C) name and telephone number of the permittee's contact person;

(D) name and telephone number of an agency contact person;

(E) location where copies of the modification request and any supporting documents can be viewed and copied; and

(F) the following statement: "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."

(3) The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee must hold a public meeting no earlier than 15 days after the publication of the notice required in paragraph (2) of this subsection and no later than 15 days before the close of the 60-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided at least 60 days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the agency contact identified in the public notice.

(6) No later than 90 days after receipt of the modification request, subparagraphs (A), (B), (C), (D), or (E) of this paragraph must be met, subject to §50.33 of this title (relating to Executive Director Action on Application), as follows:

(A) the executive director or the commission must approve the modification request, with or without changes, and modify the permit accordingly;

(B) the commission must deny the request;

(C) the commission or the executive director must determine that the modification request must follow the procedures in subsection (d) of this section for Class 3 modifications for either of the following reasons:

(i) there is significant public concern about the proposed modification; or

(ii) the complex nature of the change requires the more extensive procedures of a Class 3 modification; or

(D) the commission must approve the modification request, with or without changes, as a temporary authorization having a term of up to 180 days, in accordance with the following public notice requirements:

(i) notice of a hearing on the temporary authorization shall be given not later than the 20th day before the hearing on the authorization; and

(ii) this notice of hearing shall provide that an affected person may request an evidentiary hearing on issuance of the temporary authorization; or

(E) the executive director must notify the permittee that the executive director or the commission will decide on the request within the next 30 days.

(7) If the executive director notifies the permittee of a 30-day extension for a decision, then no later than 120 days after receipt of the modification request, subparagraphs (A), (B), (C), or (D) of this paragraph must be met, subject to §50.33 of this title (relating to Executive Director Action on Application), as follows:

(A) the executive director or the commission must approve the modification request, with or without changes, and modify the permit accordingly;

(B) the commission must deny the request;

(C) the commission or the executive director must determine that the modification request must follow the procedures in subsection (d) of this section for Class 3 modifications for either of the following reasons:

(i) there is significant public concern about the proposed modification; or

(ii) the complex nature of the change requires the more extensive procedures of a Class 3 modification; or

(D) the commission must approve the modification request, with or without changes, as a temporary authorization having a term of up to 180 days, in accordance with the following public notice requirements:

(i) notice of a hearing on the temporary authorization shall be given not later than the 20th day before the hearing on the authorization; and

(ii) this notice of hearing shall provide that an affected person may request an evidentiary hearing on issuance of the temporary authorization.

(8) If the executive director or the commission fails to make one of the decisions specified in paragraph (7) of this subsection by the 120th day after receipt of the modification request, the permittee is automatically authorized to conduct the activities described in the modification request for up to 180 days, without formal agency action. The authorized activities must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities). If the commission approves, with or without changes, or denies any modification request during the term of the temporary authorization issued pursuant to paragraph (6) or (7) of this subsection, such action cancels the temporary authorization. The commission is the sole authority for approving or denying the modification request during the term of the temporary authorization. If the executive director or the commission approves, with or without changes, or if the commission denies the modification request during the term of the automatic authorization provided for in this paragraph, such action cancels the automatic authorization.

(9) In the case of an automatic authorization under paragraph (8) of this subsection, or a temporary authorization under paragraph (6)(D) or (7)(D) of this subsection, if the executive director or the commission has not made a final approval or denial of the modification request by the date 50 days prior to the end of the temporary or automatic authorization, the permittee must within seven days of that time send a notification to all persons listed in §39.13 of this title (relating to Mailed Notice), and make a reasonable effort to notify other persons who submitted written comments on the modification request, that:

(A) the permittee has been authorized temporarily to conduct the activities described in the permit modification request; and

(B) unless the executive director or the commission acts to give final approval or denial of the request by the end of the authorization period, the permittee will receive authorization to conduct such activities for the life of the permit.

(10) If the owner/operator fails to notify the public by the date specified in paragraph (9) of this subsection, the effective date of the permanent authorization will be deferred until 50 days after the owner/operator notifies the public.

(11) Except as provided in paragraph (13) of this subsection, if the executive director or the commission does not finally approve or deny a modification request before the end of the automatic or temporary authorization period or reclassify the modification as Class 3 modification, the permittee is authorized to conduct the activities described in the permit modification request for the life of the permit unless amended or modified later under §305.62 of this title (relating to Amendment) or this section. The activities authorized under this paragraph must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities).

(12) In the processing of each Class 2 modification request which is subsequently approved or denied by the executive director or the commission in accordance with paragraph (6) or (7) of this subsection, or each Class 2 modification request for which a temporary authorization is issued in accordance with subsection (f) of this section or a reclassification to a Class 3 modification is made in accordance with paragraph (6)(C) or (7)(C) of this subsection, the executive director must consider all written comments submitted to the agency during the public comment period and must respond in writing to all significant comments.

(13) With the written consent of the permittee, the executive director may extend indefinitely or for a specified period the time periods for final approval or denial of a Class 2 modification request or for reclassifying a modification as Class 3.

(14) The commission or the executive director may change the terms of, and the commission may deny a Class 2 permit modification request under paragraphs (6) - (8) of this subsection for any of the following reasons:

(A) the modification request is incomplete;

(B) the requested modification does not comply with the appropriate requirements of Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) or other applicable requirements; or

(C) the conditions of the modification fail to protect human health and the environment.

(15) The permittee may perform any construction associated with a Class 2 permit modification request beginning 60 days after the submission of the request unless the executive director establishes a later date for commencing construction and informs the permittee in writing before the 60th day.

(d) Class 3 modifications of solid waste permits.

(1) For Class 3 modifications listed in Appendix I of this subchapter, the permittee must submit a modification request to the executive director that:

(A) describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(B) identifies that the modification is a Class 3 modification;

(C) explains why the modification is needed; and

(D) provides the applicable information in the form and manner specified in §1.5(d) of this title (relating to Records of the Agency), §§305.41 - 305.45 and 305.47 - 305.53 of this title (relating to Applicability; Application Required; Who Applies; Signatories to Applications; Contents of Application for Permit; Retention of Application Data; Additional Contents of Applications for Wastewater Discharge Permits; Additional Contents of Application for an Injection Well Permit; Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order; Revision of Applications for Hazardous Waste Permits; Waste Containing Radioactive Materials; and Application Fee), Subchapter I of this chapter (relating to Hazardous Waste Incinerator Permits), Subchapter J of this chapter (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses); and Subchapter Q of this chapter (relating to Permits for Boilers and Industrial Furnaces Burning Hazardous Waste).

(2) The permittee must send a notice of the modification request by first-class mail to all persons listed in §39.13 of this title (relating to Mailed Notice) and must cause this notice to be published in a major local newspaper of general circulation. This notice must be mailed and published within seven days before or after the date of submission of the modification request and evidence of the mailing and publication of the notice shall be provided to the executive director. The notice shall include the following:

(A) all information required by §39.11 of this title (relating to Text of Mailed Notice);

(B) announcement of a 60-day comment period, and the name and address of an agency contact person to whom comments must be sent;

(C) announcement of the date, time, and place for a public meeting on the modification request, to be held in accordance with paragraph (4) of this subsection;

(D) name and telephone number of the permittee's contact person;

(E) name and telephone number of an agency contact person;

(F) identification of the location where copies of the modification request and any supporting documents can be viewed and copied; and

(G) the following statement: "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."

(3) The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee must hold a public meeting no earlier than 15 days after the publication of the notice required in paragraph (2) of this subsection and no later than 15 days before the close of the 60-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided at least 60 days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the agency contact person identified in the public notice.

(6) After the conclusion of the 60-day comment period, the permit modification request shall be granted or denied in accordance with the applicable requirements of Chapter 39 of this title (relating to Public Notice), Chapter 50 of this title (relating to Action on Applications and Other Authorizations), and Chapter 55 of this title (relating to Requests for Reconsideration and Contested Case Hearings; Public Comment). When a permit is modified, only the conditions subject to modification are reopened.

(e) Other modifications.

(1) In the case of modifications not explicitly listed in Appendix I of this subchapter, the permittee may submit a Class 3 modification request to the agency, or the permittee may request a determination by the executive director that the modification should be reviewed and approved as a Class 1 or Class 2 modification. If the permittee requests that the modification be classified as a Class 1 or Class 2 modification, the permittee must provide the agency with the necessary information to support the requested classification.

(2) The executive director shall make the determination described in paragraph (1) of this subsection as promptly as practicable. In determining the appropriate class for a specific modification, the executive director shall consider the similarity of the modification to other modifications codified in Appendix I and the following criteria.

(A) Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment. In the case of Class 1 modifications, the executive director may require prior approval;

(B) Class 2 modifications apply to changes that are necessary to enable a permittee to respond, in a timely manner, to:

(i) common variations in the types and quantities of the wastes managed under the facility permit;

(ii) technological advancements; and

(iii) changes necessary to comply with new regulations, where these changes can be implemented without substantially changing design specifications or management practices in the permit; and

(C) Class 3 modifications reflect a substantial alteration of the facility or its operations.

(f) Temporary authorizations.

(1) Upon request of the permittee, the commission may grant the permittee a temporary authorization having a term of up to 180 days, in accordance with this subsection, and in accordance with the following public notice requirements:

(A) notice of a hearing on the temporary authorization shall be given not later than the 20th day before the hearing on the authorization; and

(B) this notice of hearing shall provide that an affected person may request an evidentiary hearing on issuance of the temporary authorization.

(2) The permittee may request a temporary authorization for:

(A) any Class 2 modification meeting the criteria in paragraph (5)(B) of this subsection; and

(B) any Class 3 modification that meets the criteria in paragraph (5)(B)(i) or (ii) of this subsection, or that meets any of the criteria in paragraph (5)(B)(iii) - (v) of this subsection and provides improved management or treatment of a hazardous waste already listed in the facility permit.

(3) The temporary authorization request must include:

(A) a specific description of the activities to be conducted under the temporary authorization;

(B) an explanation of why the temporary authorization is necessary and reasonably unavoidable; and

(C) sufficient information to ensure compliance with the applicable standards of Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) and 40 Code of Federal Regulations (CFR) Part 264.

(4) The permittee must send a notice about the temporary authorization request by first-class mail to all persons listed in §39.13 of this title (relating to Mailed Notice). This notification must be made within seven days of submission of the authorization request.

(5) The commission shall approve or deny the temporary authorization as quickly as practicable. To issue a temporary authorization, the commission must find:

(A) the authorized activities are in compliance with the applicable standards of Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) and 40 CFR Part 264; and

(B) the temporary authorization is necessary to achieve one of the following objectives before action is likely to be taken on a modification request:

(i) to facilitate timely implementation of closure or corrective action activities;

(ii) to allow treatment or storage in tanks, containers, or containment buildings, of restricted wastes in accordance with Chapter 335, Subchapter O of this title (relating to Land Disposal Restrictions), 40 CFR Part 268, or Section 3004 of the Resource Conservation and Recovery Act, 42 United States Code §6924;

(iii) to prevent disruption of ongoing waste management activities;

(iv) to enable the permittee to respond to sudden changes in the types or quantities of the wastes managed under the facility permit; or

(v) to facilitate other changes to protect human health and the environment.

(6) A temporary authorization may be reissued for one additional term of up to 180 days provided that the permittee has requested a Class 2 or 3 permit modification for the activity covered in the temporary authorization, and:

(A) the reissued temporary authorization constitutes the commission's decision on a Class 2 permit modification in accordance with subsection (c)(6)(D) or (7)(D) of this section; or

(B) the commission determines that the reissued temporary authorization involving a Class 3 permit modification request is warranted to allow the authorized activities to continue while the modification procedures of subsection (d) of this section are conducted.

(g) Public notice and appeals of permit modification decisions.

(1) The commission shall notify all persons listed in §39.13 of this title (relating to Mailed Notice) within ten working days of any decision under this section to grant or deny a Class 2 or 3 permit modification request. The commission shall also notify such persons within ten working days after an automatic authorization for a Class 2 modification goes into effect under subsection (c)(8) or (11) of this section.

(2) The executive director's or the commission's decision to grant or deny a Class 3 permit modification request under this section may be appealed under the appropriate procedures set forth in the commission's rules and in the Administrative Procedure Act, Texas Government Code, Chapter 2001.

(h) Newly regulated wastes and units.

(1) The permittee is authorized to continue to manage wastes listed or identified as hazardous under 40 CFR Part 261, or to continue to manage hazardous waste in units newly regulated as hazardous waste management units if:

(A) the unit was in existence as a hazardous waste facility unit with respect to the newly listed or characteristic waste or newly regulated waste management unit on the effective date of the final rule listing or identifying the waste or regulating the unit;

(B) the permittee submits a Class 1 modification request on or before the date on which the waste or unit becomes subject to the new requirements;

(C) the permittee is in substantial compliance with the applicable standards of Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), Chapter 335, Subchapter H, Divisions 1 through 4 of this title (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities), and 40 CFR Part 265 and Part 266;

(D) the permittee also submits a complete Class 2 or 3 modification request within 180 days after the effective date of the final rule listing or identifying the waste or subjecting the unit to Section 6921 of the Resource Conservation and Recovery Act Subtitle C (Subchapter III Hazardous Waste Management, 42 United States Code §§6921 - 6939e), ; and

(E) in the case of land disposal units, the permittee certifies that each such unit is in compliance with all applicable 40 CFR Part 265 groundwater monitoring requirements and with Chapter 37 of this title (relating to Financial Assurance) on the date 12 months after the effective date of the final rule identifying or listing the waste as hazardous, or regulating the unit as a hazardous waste management unit. If the owner or operator fails to certify compliance with these requirements, the owner or operator shall lose authority to operate under this section.

(2) New wastes or units added to a facility's permit under this subsection do not constitute expansions for the purpose of the 25% capacity expansion limit for Class 2 modifications.

(i) Combustion facility changes to meet 40 CFR Part 63, Maximum Achievable Control Technology (MACT) standards. The following procedures apply to hazardous waste combustion facility permit modifications requested under L.9. of Appendix I of this subchapter.

(1) Facility owners or operators must have complied with the Notification of Intent to Comply (NIC) requirements of 40 CFR §63.1210(b) and (c) that were in effect prior to October 11, 2000, as amended in 40 CFR §270.42(j) through February 14, 2002 (67 FR

6968), before a permit modification can be requested under this section.

(2) If the executive director does not approve or deny the request within 90 days of receiving it, the request shall be deemed approved. The executive director may, at his or her discretion, extend this 90-day deadline one time for up to 30 days by notifying the facility owner or operator.

(j) Military hazardous waste munitions storage, processing, and disposal. The permittee is authorized to continue to accept waste military munitions notwithstanding any permit conditions barring the permittee from accepting off-site wastes, if:

(1) the facility is in existence as a hazardous waste facility, and the facility is already permitted to handle waste military munitions, on the date when waste military munitions become subject to hazardous waste regulatory requirements;

(2) on or before the date when waste military munitions become subject to hazardous waste regulatory requirements, the permittee submits a Class 1 modification request to remove or revise the permit provision restricting the receipt of off-site waste munitions; and

(3) the permittee submits a Class 2 modification request within 180 days of the date when the waste military munitions become subject to hazardous waste regulatory requirements.

(k) Appendix I. The following appendix will be used for the purposes of this subchapter which relates to industrial and hazardous solid waste permit modification at the request of the permittee.
Figure: 30 TAC §305.69(k) (No change.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 27, 2007.

TRD-200703279
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: August 16, 2007
Proposal publication date: March 9, 2007
For further information, please call: (512) 239-6087

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SUBCHAPTER I. HAZARDOUS WASTE INCINERATOR PERMITS

30 TAC §305.175

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC or other laws of this state and under THSC, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendment implements THSC, Chapter 361.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER Q. PERMITS FOR BOILERS AND INDUSTRIAL FURNACES BURNING HAZARDOUS WASTE

30 TAC §305.571, §305.572

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of this state and under THSC, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendment implements the THSC, Chapter 361.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 335. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE

The Texas Commission on Environmental Quality (TCEQ or commission) adopts amendments to §§335.1, 335.29, 335.31, 335.152, 335.221, 335.431, and 335.504. Sections 335.1 and 335.504 are adopted *with changes* to the proposed text as published in the March 9, 2007, issue of the *Texas Register* (32 TexReg 1209). Sections 335.29, 335.31, 335.152, 335.221, and 335.431 are adopted *without changes* to the proposed text and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The federal hazardous waste program is authorized under Section 3001 of the Resource Conservation and Recovery Act (RCRA) of 1976, 42 United States Code §6921 *et seq.* States may obtain authorization from the United States Environmental Protection Agency (EPA) to administer the hazardous waste program at the state level. State authorization is a rulemaking process through which EPA delegates the primary responsi-

bility of implementing the RCRA hazardous waste program to individual states in lieu of EPA. This process ensures national consistency and minimum standards while providing flexibility to states in implementing rules. State RCRA programs must always be at least as stringent as the federal requirements.

Since the beginning of the federal hazardous waste program, the State of Texas has continuously exercised its prerogative to participate in the EPA's authorization program. Texas received authorization of its hazardous waste "base program" under RCRA on December 26, 1984. Texas received authorization for revisions to its base hazardous waste program on February 17, 1987 (RCRA Clusters I and II). Texas submitted further revisions to its hazardous waste program and received final authorization of those revisions on March 15, 1990, July 23, 1990, October 21, 1991, December 4, 1992, June 27, 1994, November 26, 1997, October 18, 1999, September 11, 2000, and June 14, 2005 (RCRA Clusters III through X).

To maintain authorization, the commission must adopt regulations that meet the minimum standards of federal programs administered by EPA. Because the federal regulations undergo regular revision, the commission adopts new regulations to meet the changing federal regulations. The commission must adopt rule amendments that implement certain mandatory revisions to the federal hazardous waste program, which were made by EPA after June 30, 2000. In order for the State of Texas to maintain its RCRA authorization and continue to receive federal funding for the program, the mandatory federal regulation changes in RCRA Clusters XI, XII, XIII, and XV must be incorporated into state rules.

This rulemaking includes the mandatory parts of RCRA Clusters XI, XII, XIII, and XV. Establishing equivalency with federal regulations will enable the State of Texas to increase its level of authorization to operate aspects of the federal hazardous waste program in lieu of the EPA. Additionally, the timely adoption of these federal regulations allows the commission to continue receiving special project funding through the EPA Performance Partnership Grant.

The Hazardous Waste Combustion Maximum Achievable Control Technology (MACT) regulations are multi-media at the federal and state level, affecting both air quality and hazardous waste management. The TCEQ has already adopted certain parts of Title 40 Code of Federal Regulations (CFR) Part 63, Subpart EEE (i.e., the Hazardous Waste Combustion MACT rules) prior to this rulemaking under air quality regulations at Title 30 Texas Administrative Code Chapter 113. This rulemaking includes other parts of the federal combustion MACT program, which are codified at 40 CFR Parts 264, 265, 266, and 270. The adopted rule changes related to air quality are necessary to be consistent with previously adopted federal requirements.

A corresponding rulemaking is published in this issue of the *Texas Register* and includes changes to 30 TAC Chapter 305, Consolidated Permits.

SECTION BY SECTION DISCUSSION

§335.1. Definitions

Amending the definitions is mandatory to conform with federal definitions in the RCRA program.

The commission adopts an amendment to §335.1(33) to delete the definition of corrective action management unit (CAMU) to conform to federal regulations promulgated in the January 22, 2002, issue of the *Federal Register* (67 FR 2962). EPA moved the definition of CAMU from 40 CFR §260.10 to 40 CFR Part 264, Subpart S, and created "CAMU-eligible waste" in 40 CFR Part 264, Subpart S. The commission adopts these changes by reference in §335.152. Subsequent paragraphs have been renumbered accordingly.

The commission adopts an amendment to §335.1(133)(A)(iv) to conform to federal regulations promulgated in the July 3, 2001, issue of the *Federal Register* (66 FR 35087), November 20, 2001, issue of the *Federal Register* (66 FR 58258), March 13, 2002, issue of the *Federal Register* (67 FR 11251), July 24, 2002, issue of the *Federal Register* (67 FR 48393), and February 24, 2005, issue of the *Federal Register* (70 FR 9138). This amendment incorporates by reference requirements for exclusions from the definition of solid waste found in 40 Code of Federal Regulations §261.4. First, this amendment exempts wastes that meet comparable syngas fuel requirements from classification as a solid waste if the fuel is burned in a gas turbine. Second, the amendment also adds three inorganic chemical manufacturing wastes (K176, K177, and K178) to the list of hazardous wastes and also adds land disposal restrictions for these wastes. Third, the amendment deletes from the definition of hazardous waste those wastes that are classified as mineral processing by-products and sludges that test as being characteristically hazardous and are being reclaimed as solid wastes and disallows the toxicity characteristic leaching procedure to be used for determining whether manufactured gas plant waste is hazardous. Fourth, this amendment establishes conditions for excluding hazardous secondary materials used to make zinc fertilizers from the definition of solid waste. Finally, the amendment adds hazardous nonwastewaters generated from the production of certain dyes, pigments, and food, drug and cosmetic colorants (K181) to the list of hazardous wastes. In response to comments, the commission removed the exclusion for landfill leachates and condensates from the definition of solid waste.

§335.29. Adoption of Appendices by Reference

The commission deletes existing language in §335.29(2) and (3), and renumbers paragraphs as necessary. Old paragraphs (2) and (3) refer to 40 CFR Part 261, Appendices II and III. These appendices no longer exist in the federal regulations.

The commission adopts an amendment to §335.29(4), renumbered as paragraph (2), to conform to federal regulations promulgated in the November 20, 2001, issue of the *Federal Register* (66 FR 58258) and February 24, 2005, issue of the *Federal Register* (70 FR 9138). This amendment adopts by reference requirements related to the basis for listing hazardous waste found in 40 Code of Federal Regulations Part 261, Appendix VII. This amendment adds toxic constituents found in four newly listed wastes (K176, K177, K178, and K181) to the list of constituents which forms the basis for classifying wastes as hazardous.

The commission adopts an amendment to §335.29(5), renumbered as paragraph (3), to conform to federal regulations promulgated in the February 24, 2005, issue of the *Federal Register* (70 FR 9138). This amendment adopts by reference the list of hazardous constituents found in 40 Code of Federal Regulations Part 261, Appendix VIII. This amendment adds hazardous constituents found in four newly listed wastes (K176, K177, K178, and K181) to the list of hazardous constituents.

§335.31. Incorporation of References

The commission adopts an amendment to §335.31 to conform to federal regulations promulgated in the June 28, 2001, issue of the *Federal Register* (66 FR 34374). This amendment incor-

porates by reference revisions to references found in 40 Code of Federal Regulations §260.11. This amendment updates the official mailing address for EPA.

§335.152. Standards

The commission adopts an amendment to §335.152(a)(13) and (14) to conform to federal regulations promulgated in the July 3, 2001, issue of the *Federal Register* (66 FR 35087) and January 22, 2002, issue of the *Federal Register* (67 FR 2962). This amendment adopts by reference revisions to incinerators found in 40 Code of Federal Regulations Part 264, Subpart O and revisions to corrective action for solid waste management units found in 40 Code of Federal Regulations Part 264, Subpart S. The revisions to 40 CFR Part 264, Subpart O amend final emission standards for hazardous waste combustors and amend compliance standards for hazardous waste combustors. The revisions to 40 CFR Part 264, Subpart S facilitate treatment, storage, and disposal of hazardous wastes in CAMUs managed for implementing cleanup.

§335.221. Applicability and Standards

The commission adopts an amendment to §335.221(a) to conform to federal regulations promulgated in the February 14, 2002, issue of the *Federal Register* (67 FR 6968). This amendment adopts by reference revisions to standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities found in 40 Code of Federal Regulations Part 266, Subpart H, for hazardous waste burned in boilers and industrial furnaces. This amendment adopts by reference revisions to the September 1999 National Emission Standards for Hazardous Air Pollutants (NESHAP) rule to adopt final standards to fulfill the statutory requirement to have national emission standards in place by a specified time.

The commission also amends §335.221(a)(1) by deleting subparagraph (A). Subparagraph (A) changes any reference to 40 CFR §266.212 that is found in 40 CFR §266.100 to 40 CFR §266.112. 40 CFR §266.212 no longer is referenced in 40 CFR §266.100. Deleting subparagraph (A) requires that paragraph (1) be renumbered to eliminate the need for a separate subparagraph (B) and incorporates the text of subparagraph (B) into a single, unbroken paragraph without subparagraphs.

§335.431. Purpose, Scope, and Applicability

The commission adopts an amendment to §335.431(c)(1) and (3) to conform to federal regulations promulgated in the November 20, 2001, issue of the *Federal Register* (66 FR 58258) and February 24, 2005, issue of the *Federal Register* (70 FR 9138). These amendments adopt by reference revisions to land disposal restrictions found in 40 Code of Federal Regulations Part 268, Subpart C, for prohibitions on land disposal. These amendments require that three inorganic chemical manufacturing wastes (K176, K177, and K178) meet universal treatment standards and require that hazardous nonwastewaters generated from the production of certain dyes, pigments and food, drug, and cosmetic colorants (K181) meet universal treatment standards. In addition, K061 waste derived from fertilizers is no longer exempted from treatment standards under the land disposal restrictions.

§335.504. Hazardous Waste Determination

The commission adopts an amendment to §335.504(1) to conform to federal regulations promulgated in the February 24, 2005, issue of the *Federal Register* (70 FR 9138). This amendment incorporates by reference revisions to the identification and listing of hazardous waste found in 40 Code of Federal Regulations Part 261, Subpart A, General. This amendment was added in response to a comment and excludes landfill leachates and condensates from the definition of hazardous waste.

The commission adopts an amendment to §335.504(2) to conform to federal regulations promulgated in the November 8, 2000, issue of the *Federal Register* (65 FR 67068) and the February 24, 2005, issue of the *Federal Register* (70 FR 9138). This amendment incorporates by reference revisions to the identification and listing of hazardous waste found in 40 Code of Federal Regulations Part 261, Subpart D, Lists of Hazardous Wastes. This amendment adds two wastes generated by the chlorinated aliphatics industry (K174 and K175) to the list of hazardous wastes. It also adds hazardous nonwastewaters generated from the production of certain dyes, pigments and food, drug, and cosmetic colorants (K181) to the list of hazardous wastes.

The commission adopts an amendment to §335.504(3) to conform to federal regulations promulgated in the March 13, 2002, issue of the *Federal Register* (67 FR 11251). This amendment incorporates by reference revisions to the identification and listing of hazardous waste found in 40 Code of Federal Regulations Part 261, Subpart C, Characteristics of Hazardous Waste. This amendment deletes regulatory language classifying mineral processing characteristic by-products and sludges that test as characteristically hazardous and which are being reclaimed as solid wastes. It also disallows the toxicity characteristic leaching procedure to be used for determining whether manufactured gas plant waste is hazardous.

In addition to the changes discussed previously, the commission adopts corrections to outdated citations.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute.

Although the intent of the rulemaking is to protect the environment and reduce the risk to human health from environmental exposure, the rulemaking is not a major environmental rule because it will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. There is no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state because 42 United States Code (USC), §6926(g), already imposes the more stringent federal requirements on the regulated community under the Hazardous and Solid Waste Amendments of 1984. The regulated community must comply with the more stringent federal requirements beginning on the effective date of the federal regulations. Because the regulated community is already required to comply with the more stringent federal rules, the adopted equivalent state rules will not cause any adverse effects.

There is no adverse effect in a material way on the environment, or the public health and safety of the state or a sector of the state because the rulemaking is designed to protect the environment, the public health, and the public safety of the state and all sectors of the state. Because the rulemaking does not have an adverse material impact on the economy, the rulemaking does not meet

the definition of a major environmental rule. Furthermore, the rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a).

First, the rulemaking does not exceed a standard set by federal law because the commission adopts this rulemaking to implement revisions to the federal hazardous waste program. The commission must meet the minimum standards of the federal program to maintain authorization of the state hazardous waste program.

Second, although the rulemaking contains some requirements that are more stringent than existing state rules, federal law requires the commission to promulgate rules that are as stringent as federal law for the commission to maintain authorization of the state hazardous waste program.

Third, the rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government, where the delegation agreement or contract is to implement a state and federal program. On the contrary, the commission must undertake the rulemaking to maintain authorization of the state hazardous waste program.

And fourth, the rulemaking does not seek to adopt a rule solely under the general powers of the agency instead of under a specific state law. The commission adopts this rulemaking under Texas Water Code, §5.103 and §5.105 and under Texas Health and Safety Code, §361.017 and §361.024.

The commission solicited public comment on the draft regulatory impact analysis determination. No comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the rulemaking and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 applies. The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007 does not apply to the rulemaking because this action is reasonably taken to fulfill an obligation mandated by federal law; therefore, this action is exempt under Texas Government Code, §2007.003(b)(4).

The specific purpose of the rulemaking is to maintain state RCRA authorization by adopting state hazardous waste rules that are equivalent to the federal regulations. The rulemaking will substantially advance this purpose by adopting language that is equivalent to the language of the federal regulations and by incorporating the federal regulations by reference.

Promulgation and enforcement of the rules will not be a statutory or constitutional taking of private real property. Specifically, the rulemaking does not affect a landowner's rights in private real property because this rulemaking does not constitutionally burden the owner's right to property, does not restrict or limit the owner's right to property, and does not reduce the value of property by twenty-five percent or more beyond that which would otherwise exist in the absence of the regulations.

The rulemaking seeks to meet the minimum standards of federal RCRA regulations that are already in place. 42 USC, §6926(g) imposes on the regulated community any federal requirements that are more stringent than current state rules. The regulated community must already have complied with the more stringent federal requirements as of the effective date of the federal regulations. Because the regulated community is already required to comply with the more stringent federal regulations, promulgating equivalent state rules will not burden, restrict, or limit the owner's right to property and will not reduce the value of property by twenty-five percent or more.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the adoption is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 Texas Administrative Code §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, or will affect an action and/or authorization identified in Coastal Coordination Act Implementation Rules, 31 Texas Administrative Code §505.11(a)(6), and will, therefore, require that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process. The commission prepared a consistency determination for the rule in accordance with §505.22 and found the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to the rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). Applicable policies are construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the federal Solid Waste Disposal Act, 42 USC, §§6901 *et seq.* Promulgation and enforcement of these rules are consistent with the applicable CMP goals and policies because the rule amendments will update and enhance the commission's rules concerning hazardous and industrial solid waste facilities. In addition, the rule does not violate any applicable provisions of the CMP's stated goals and policies.

The commission invited public comment regarding the consistency of the rules with the CMP. No comments were received regarding the consistency of the rules with the CMP.

SUBMITTAL OF COMMENTS

The comment period closed on April 9, 2007. The commission received comments from one individual.

RESPONSE TO COMMENTS

An individual commented that TCEQ's proposed rule change concerning the definition of solid waste at §335.1(133)(A)(iv) excludes certain landfill leachates from being classified as a solid waste. The individual contends that under the proposed rule, landfill leachates would not be regulated as waste. The individual points out that the federal regulation merely excludes the landfill leachates from the definition of hazardous waste, thereby allowing the leachate to remain regulated as a solid waste. The individual commented that this result is not what EPA intended.

The commission agrees with this comment. The federal exclusion for landfill leachates and condensates at 40 Code of Federal Regulations (CFR) Part 261, Subpart A is from the definition of hazardous waste, not solid waste. The federal regulation does not exclude the landfill leachates from the definition of solid waste, thereby requiring the leachate to be regulated as a solid waste. Therefore, the commission has removed the exclusion for landfill leachates and condensates from the definition of solid waste under §335.1(133)(A)(iv), and moved the exclusion to §335.504(1) in response to this comment. Language has been

added to §335.504(1) incorporating by reference the exclusions from hazardous waste under 40 CFR Part 261, Subpart A.

An individual commented that Texas is never required to adopt a federal exclusion because state rules may be more stringent than federal regulations. The individual commented that a federal exclusion results in a federal regulation that is less stringent than previously existing federal regulations or current state rules; therefore states--because they may be more stringent than the federal government--are never required to adopt a federal exclusion.

The commission agrees that, generally, state requirements may be more stringent than federal requirements. (RCRA, §3009, 42 USC, §6929). But although state requirements may generally be more stringent than federal requirements, states do not have authority to list a particular waste as hazardous waste. A state governor may petition EPA to list a particular waste as a hazardous waste, but EPA would make the final determination on the petition. (RCRA, §3001(c), 42 USC, §6921(c)).

The commission disagrees with the comment that Texas is never required to adopt a federal exclusion. EPA promulgated the listing of K181 wastes, but excluded the related landfill leachates from the listing. Landfill leachates of this type have never been listed as hazardous waste. EPA promulgated the listing of K181 wastes under the Hazardous and Solid Waste Amendments (HSWA) of 1984 (RCRA, §3001(e)(2), 42 USC, §6921(e)(2)). (*See also* 70 FedReg 9138, 9167 (2005)). Federal regulations promulgated under HSWA take affect in all states, regardless of their RCRA authorization status. (RCRA, §3006(g)(1), 42 USC, §6926(g)(1)).

EPA requires states with final RCRA authorization to update their programs to reflect federal program changes and to submit those updates to EPA for approval (40 CFR §271.21 (2006)). (*See also* 70 FedReg 9138, 9167 (2005)). The commission adopts the changes to update the state's RCRA program and to maintain RCRA authorization. The commission has made no change in response to this comment.

When commission rules incorporate federal amendments by reference into the Texas Administrative Code, the commission refers to the date and page from the appropriate Federal Register. An individual recommended that the commission instead reference the date when the CFR was updated to reflect the specific federal amendment.

The commission disagrees with this comment. The proposed rule cites the federal register page and date of the specific federal amendment to give the reader specific detailed information about the rule change. The published CFR includes federal amendments for only a one-year period because it is published only once a year and it does not include a specific explanation of each of the rule changes. EPA recommends that state regulations include the federal register publication date as part of the equivalency demonstration. Therefore, the commission has made no change in response to this comment.

An individual recommended that, as part of this rulemaking, the commission include federal register dates for all federal regulations incorporated in 30 TAC Chapter 335, instead of including federal register dates for only the proposed changes.

The commission has undertaken this rulemaking to update commission rules under RCRA Clusters XI, XII, XIII, and XV. Accordingly, the commission is updating publication dates for federal register citations only in these particular rules. The recommended changes are outside the scope of this rulemaking. Therefore, the commission has made no change in response to this comment.

An individual asked whether any federal exclusion at 40 CFR §261.4 would apply in Texas, as stated in §335.62.

All federal exclusions at 40 CFR §261.4 apply in Texas; however, §335.62 contained no proposed changes. Therefore the commission has made no change to §335.62 in response to this comment.

SUBCHAPTER A. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE IN GENERAL

30 TAC §§335.1, 335.29, 335.31

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code and other laws of this state; and under Texas Health and Safety Code, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the Texas Health and Safety Code.

The adopted amendments implement Texas Health and Safety Code, Chapter 361.

§335.1. Definitions.

In addition to the terms defined in Chapter 3 of this title (relating to Definitions), the following words and terms, when used in this chapter, have the following meanings.

(1) Aboveground tank--A device meeting the definition of tank in this section and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(2) Act--Texas Health and Safety Code, Chapter 361.

(3) Active life--The period from the initial receipt of hazardous waste at the facility until the executive director receives certification of final closure.

(4) Active portion--That portion of a facility where processing, storage, or disposal operations are being or have been conducted after November 19, 1980, and which is not a closed portion. (See also "closed portion" and "inactive portion.")

(5) Activities associated with the exploration, development, and protection of oil or gas or geothermal resources--Activities associated with:

(A) the drilling of exploratory wells, oil wells, gas wells, or geothermal resource wells;

(B) the production of oil or gas or geothermal resources, including:

(i) activities associated with the drilling of injection water source wells that penetrate the base of usable quality water;

(ii) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the commission to regulate the production of oil or gas or geothermal resources;

(iii) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(iv) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in the Texas Natural Resources Code, §1.173;

(v) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in the Texas Natural Resources Code, §91.201; and

(vi) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;

(C) the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the commission to regulate the exploration, development, and production of oil or gas or geothermal resources; and

(D) the discharge, storage, handling, transportation, reclamation, or disposal of waste or any other substance or material associated with any activity listed in subparagraphs (A) - (C) of this paragraph, except for waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency in accordance with the Federal Solid Waste Disposal Act, as amended (42 United States Code, §§6901 *et seq.).*

(6) Administrator--The administrator of the United States Environmental Protection Agency or his designee.

(7) Ancillary equipment--Any device that is used to distribute, meter, or control the flow of solid waste or hazardous waste from its point of generation to a storage or processing tank(s), between solid waste or hazardous waste storage and processing tanks to a point of disposal on site, or to a point of shipment for disposal off site. Such devices include, but are not limited to, piping, fittings, flanges, valves, and pumps.

(8) Aquifer--A geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(9) Area of concern--Any area of a facility under the control or ownership of an owner or operator where a release to the environment of hazardous wastes or hazardous constituents has occurred, is suspected to have occurred, or may occur, regardless of the frequency or duration.

(10) Authorized representative--The person responsible for the overall operation of a facility or an operation unit (i.e., part of a facility), e.g., the plant manager, superintendent, or person of equivalent responsibility.

(11) Battery--As defined in §335.261 of this title (relating to Universal Waste Rule).

(12) Boiler--An enclosed device using controlled flame combustion and having the following characteristics:

(A) the unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases;

(B) the unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design:

(i) process heaters (units that transfer energy directly to a process stream); and

(ii) fluidized bed combustion units;

(C) while in operation, the unit must maintain a thermal energy recovery efficiency of at least 60%, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(D) the unit must export and utilize at least 75% of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(E) the unit is one which the executive director has determined, on a case-by-case basis, to be a boiler, after considering the standards in §335.20 of this title (relating to Variance To Be Classified as a Boiler).

(13) Captive facility--A facility that accepts wastes from only related (within the same corporation) off-site generators.

(14) Captured facility--A manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(15) Captured receiver--A receiver that is located within the property boundaries of the generators from which it receives waste.

(16) Carbon regeneration unit--Any enclosed thermal treatment device used to regenerate spent activated carbon.

(17) Certification--A statement of professional opinion based upon knowledge and belief.

(18) Class 1 wastes--Any industrial solid waste or mixture of industrial solid wastes which because of its concentration, or physical or chemical characteristics, is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, or may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or disposed of or otherwise managed, as further defined in §335.505 of this title (relating to Class 1 Waste Determination).

(19) Class 2 wastes--Any individual solid waste or combination of industrial solid waste which cannot be described as hazardous, Class 1, or Class 3 as defined in §335.506 of this title (relating to Class 2 Waste Determination).

(20) Class 3 wastes--Inert and essentially insoluble industrial solid waste, usually including, but not limited to, materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable, as further defined in §335.507 of this title (relating to Class 3 Waste Determination).

(21) Closed portion--That portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also "active portion" and "inactive portion.")

(22) Closure--The act of permanently taking a waste management unit or facility out of service.

(23) Commercial hazardous waste management facility--Any hazardous waste management facility that accepts hazardous waste or polychlorinated biphenyl compounds for a charge, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person.

(24) Component--Either the tank or ancillary equipment of a tank system.

(25) Confined aquifer--An aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(26) Consignee--The ultimate treatment, storage, or disposal facility in a receiving country to which the hazardous waste will be sent.

(27) Container--Any portable device in which a material is stored, transported, processed, or disposed of, or otherwise handled.

(28) Containment building--A hazardous waste management unit that is used to store or treat hazardous waste under the provisions of §335.152(a)(19) or §335.112(a)(21) of this title (relating to Standards).

(29) Contaminant--Includes, but is not limited to, "solid waste," "hazardous waste," and "hazardous waste constituent" as defined in this subchapter; "pollutant" as defined in Texas Water Code (TWC), §26.001, and Texas Health and Safety Code (THSC), §361.401; "hazardous substance" as defined in THSC, §361.003; and other substances that are subject to the Texas Hazardous Substances Spill Prevention and Control Act, TWC, §§26.261 - 26.267.

(30) Contaminated medium/media--A portion or portions of the physical environment to include soil, sediment, surface water, groundwater or air, that contain contaminants at levels that pose a substantial present or future threat to human health and the environment.

(31) Contingency plan--A document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

(32) Control--To apply engineering measures such as capping or reversible treatment methods and/or institutional measures such as deed restrictions to facilities or areas with wastes or contaminated media which result in remedies that are protective of human health and the environment when combined with appropriate maintenance, monitoring, and any necessary further corrective action.

(33) Corrosion expert--A person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

(34) Decontaminate--To apply a treatment process(es) to wastes or contaminated media whereby the substantial present or future threat to human health and the environment is eliminated.

(35) Designated facility--A Class 1 or hazardous waste treatment, storage, or disposal facility which has received a United States Environmental Protection Agency permit (or a facility with interim status) in accordance with the requirements of 40 Code of Federal Regulations (CFR) Parts 270 and 124; a permit from a state authorized in accordance with 40 CFR Part 271 (in the case of hazardous waste); a permit issued in accordance with §335.2 of this title (relating to Permit Required) (in the case of nonhazardous waste); or that is regulated under §335.24(f), (g), or (h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) or §335.241 of this title (relating to Applicability and Requirements) and that has been designated on the manifest by the generator in accordance with §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste). If a waste is destined to a facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving state to accept such waste. Designated facility also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with §335.12(e) of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities).

(36) Destination facility--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(37) Dike--An embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

(38) Dioxins and furans (D/F)--Tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

(39) Discharge or hazardous waste discharge--The accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of waste into or on any land or water.

(40) Disposal--The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(41) Disposal facility--A facility or part of a facility at which solid waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term "disposal facility" does not include a corrective action management unit into which remediation wastes are placed.

(42) Drip pad--An engineered structure consisting of a curbed, free-draining base, constructed of non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(43) Elementary neutralization unit--A device which:

(A) is used for neutralizing wastes which are hazardous only because they exhibit the corrosivity characteristic defined in 40 Code of Federal Regulations (CFR) §261.22, or are listed in 40 CFR Part 261, Subpart D, only for this reason; or is used for neutralizing the pH of non-hazardous industrial solid waste; and

(B) meets the definition of tank, tank system, container, transport vehicle, or vessel as defined in this section.

(44) United States Environmental Protection Agency (EPA) acknowledgment of consent--The cable sent to EPA from the United States Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(45) United States Environmental Protection Agency (EPA) hazardous waste number--The number assigned by the EPA to each hazardous waste listed in 40 Code of Federal Regulations (CFR) Part 26l, Subpart D and to each characteristic identified in 40 CFR Part 26l, Subpart C.

(46) United States Environmental Protection Agency (EPA) identification number--The number assigned by the EPA or the commission to each generator, transporter, and processing, storage, or disposal facility.

(47) Essentially insoluble--Any material, which if representatively sampled and placed in static or dynamic contact with deionized water at ambient temperature for seven days, will not leach any quantity of any constituent of the material into the water in excess of current United States Public Health Service or United States Environmental Protection Agency limits for drinking water as published in the *Federal Register.*

(48) Equivalent method--Any testing or analytical method approved by the administrator under 40 Code of Federal Regulations §260.20 and §260.21.

(49) Existing portion--That land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(50) Existing tank system or existing component--A tank system or component that is used for the storage or processing of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(A) a continuous on-site physical construction or installation program has begun; or

(B) the owner or operator has entered into contractual obligations--which cannot be canceled or modified without substantial loss--for physical construction of the site or installation of the tank system to be completed within a reasonable time.

(51) Explosives or munitions emergency--A situation involving the suspected or detected presence of unexploded ordnance, damaged or deteriorated explosives or munitions, an improvised explosive device, other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. These situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

(52) Explosives or munitions emergency response--All immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency, subject to the following:

(A) an explosives or munitions emergency response includes in-place render-safe procedures, treatment or destruction of the explosives or munitions and/or transporting those items to another location to be rendered safe, treated, or destroyed;

(B) any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency; and

(C) explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at hazardous waste facilities.

(53) Explosives or munitions emergency response specialist--An individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques, including United States Department of Defense (DOD) emergency explosive ordnance disposal, technical escort unit, and DOD-certified civilian or contractor personnel; and, other federal, state, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

(54) Extrusion--A process using pressure to force ground poultry carcasses through a decreasing-diameter barrel or nozzle, causing the generation of heat sufficient to kill pathogens, and resulting in an extruded product acceptable as a feed ingredient.

(55) Facility--Includes:

(A) all contiguous land, and structures, other appurtenances, and improvements on the land, used for storing, processing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them);

(B) for the purpose of implementing corrective action under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units), all contiguous property under the control of the owner or operator seeking a permit for the treatment, storage, and/or disposal of hazardous waste. This definition also applies to facilities implementing corrective action under Texas Water Code, §7.031 (Corrective Action Relating to Hazardous Waste).

(56) Final closure--The closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) are no longer conducted at the facility unless subject to the provisions in §335.69 of this title (relating to Accumulation Time).

(57) Food-chain crops--Tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(58) Freeboard--The vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

(59) Free liquids--Liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(60) Generator--Any person, by site, who produces municipal hazardous waste or industrial solid waste; any person who possesses municipal hazardous waste or industrial solid waste to be

shipped to any other person; or any person whose act first causes the solid waste to become subject to regulation under this chapter. For the purposes of this regulation, a person who generates or possesses Class 3 wastes only shall not be considered a generator.

(61) Groundwater--Water below the land surface in a zone of saturation.

(62) Hazardous industrial waste--Any industrial solid waste or combination of industrial solid wastes identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the Resource Conservation and Recovery Act of 1976, §3001 (42 United States Code, §6921). The administrator has identified the characteristics of hazardous wastes and listed certain wastes as hazardous in 40 Code of Federal Regulations Part 26l. The executive director will maintain in the offices of the commission a current list of hazardous wastes, a current set of characteristics of hazardous waste, and applicable appendices, as promulgated by the administrator.

(63) Hazardous substance--Any substance designated as a hazardous substance under 40 Code of Federal Regulations Part 302.

(64) Hazardous waste--Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*

(65) Hazardous waste constituent--A constituent that caused the administrator to list the hazardous waste in 40 Code of Federal Regulations (CFR) Part 261, Subpart D or a constituent listed in Table 1 of 40 CFR §261.24.

(66) Hazardous waste management facility--All contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly- or privately-owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

(67) Hazardous waste management unit--A landfill, surface impoundment, waste pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.

(68) In operation--Refers to a facility which is processing, storing, or disposing of solid waste or hazardous waste.

(69) Inactive portion--That portion of a facility which is not operated after November 19, 1980. (See also "active portion" and "closed portion.")

(70) Incinerator--Any enclosed device that:

(A) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(B) meets the definition of infrared incinerator or plasma arc incinerator.

(71) Incompatible waste--A hazardous waste which is unsuitable for:

(A) placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or

(B) commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(72) Individual generation site--The contiguous site at or on which one or more solid waste or hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of solid waste or hazardous waste, but is considered a single or individual generation site if the site or property is contiguous.

(73) Industrial furnace--Includes any of the following enclosed devices that use thermal treatment to accomplish recovery of materials or energy:

(A) cement kilns;

(B) lime kilns;

(C) aggregate kilns;

(D) phosphate kilns;

(E) coke ovens;

(F) blast furnaces;

(G) smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

(H) titanium dioxide chloride process oxidation reactors;

(I) methane reforming furnaces;

(J) pulping liquor recovery furnaces;

(K) combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(L) halogen acid furnaces for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3.0%, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as generated; and

(M) other devices the commission may list, after the opportunity for notice and comment is afforded to the public.

(74) Industrial solid waste--Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operation, which may include hazardous waste as defined in this section.

(75) Infrared incinerator--Any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(76) Inground tank--A device meeting the definition of tank in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(77) Injection well--A well into which fluids are injected. (See also "underground injection.")

(78) Inner liner--A continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

(79) Installation inspector--A person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

(80) International shipment--The transportation of hazardous waste into or out of the jurisdiction of the United States.

(81) Lamp--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(82) Land treatment facility--A facility or part of a facility at which solid waste or hazardous waste is applied onto or incorporated into the soil surface and that is not a corrective action management unit; such facilities are disposal facilities if the waste will remain after closure.

(83) Landfill--A disposal facility or part of a facility where solid waste or hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(84) Landfill cell--A discrete volume of a solid waste or hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(85) Leachate--Any liquid, including any suspended components in the liquid, that has percolated through or drained from solid waste or hazardous waste.

(86) Leak-detection system--A system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of solid waste or hazardous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of solid waste or hazardous waste into the secondary containment structure.

(87) Licensed professional geoscientist--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(88) Liner--A continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of solid waste or hazardous waste, hazardous waste constituents, or leachate.

(89) Management or hazardous waste management--The systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of solid waste or hazardous waste.

(90) Manifest--The waste shipping document, United States Environmental Protection Agency (EPA) Form 8700-22, originated and signed by the generator or offeror, that will accompany and be used for tracking the transportation, disposal, treatment, storage, or recycling of shipments of hazardous wastes or Class 1 industrial solid wastes. The form used for this purpose is the EPA Form 8700-22, obtainable from any printer registered with the EPA.

(91) Manifest tracking number--The alphanumeric identification number (i.e., a unique three-letter suffix preceded by nine numerical digits), which is pre-printed on the manifest by a registered source.

(92) Military munitions--All ammunition products and components produced or used by or for the Department of Defense (DOD) or the United States Armed Services for national defense and security, including military munitions under the control of the DOD, the United States Coast Guard, the United States Department of Energy (DOE), and National Guard personnel. The term "military munitions":

(A) includes confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof; and

(B) includes non-nuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed; but

(C) does not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof.

(93) Miscellaneous unit--A hazardous waste management unit where hazardous waste is stored, processed, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under Chapter 331 of this title (relating to Underground Injection Control), corrective action management unit, containment building, staging pile, or unit eligible for a research, development, and demonstration permit or under Chapter 305, Subchapter K of this title (relating to Research, Development, and Demonstration Permits).

(94) Movement--That solid waste or hazardous waste transported to a facility in an individual vehicle.

(95) Municipal hazardous waste--A municipal solid waste or mixture of municipal solid wastes which has been identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency.

(96) Municipal solid waste--Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities; including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial waste.

(97) New tank system or new tank component--A tank system or component that will be used for the storage or processing of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of 40 Code of Federal Regulations (CFR) §264.193(g)(2) (incorporated by reference at §335.152(a)(8) of this title (relating to Standards)) and 40 CFR §265.193(g)(2) (incorporated by reference at §335.112(a)(9) of this title (relating to Standards)), a new tank system is one for which construction commences after July 14, 1986. (See also "existing tank system.")

(98) Off-site--Property which cannot be characterized as on-site.

(99) Onground tank--A device meeting the definition of tank in this section and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(100) On-Site--The same or geographically contiguous property which may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

(101) Open burning--The combustion of any material without the following characteristics:

(A) control of combustion air to maintain adequate temperature for efficient combustion;

(B) containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) control of emission of the gaseous combustion products. (See also "incineration" and "thermal treatment.")

(102) Operator--The person responsible for the overall operation of a facility.

(103) Owner--The person who owns a facility or part of a facility.

(104) Partial closure--The closure of a hazardous waste management unit in accordance with the applicable closure requirements of Subchapters E and F of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(105) PCBs or polychlorinated biphenyl compounds--Compounds subject to 40 Code of Federal Regulations Part 761.

(106) Permit--A written permit issued by the commission which, by its conditions, may authorize the permittee to construct, install, modify, or operate a specified municipal hazardous waste or industrial solid waste treatment, storage, or disposal facility in accordance with specified limitations.

(107) Personnel or facility personnel--All persons who work at, or oversee the operations of, a solid waste or hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of this chapter.

(108) Pesticide--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(109) Petroleum substance--A crude oil or any refined or unrefined fraction or derivative of crude oil which is a liquid at standard conditions of temperature and pressure.

(A) Except as provided in subparagraph (C) of this paragraph for the purposes of this chapter, a "petroleum substance" shall be limited to a substance in or a combination or mixture of substances within the following list (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 United States Code (USC), §§6921, *et seq.))* and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere):

(i) basic petroleum substances--i.e., crude oils, crude oil fractions, petroleum feedstocks, and petroleum fractions;

(ii) motor fuels--a petroleum substance which is typically used for the operation of internal combustion engines and/or motors (which includes, but is not limited to, stationary engines and engines used in transportation vehicles and marine vessels);

(iii) aviation gasolines--i.e., Grade 80, Grade 100, and Grade 100-LL;

(iv) aviation jet fuels--i.e., Jet A, Jet A-1, Jet B, JP-4, JP-5, and JP-8;

(v) distillate fuel oils--i.e., Number 1-D, Number 1, Number 2-D, and Number 2;

(vi) residual fuel oils--i.e., Number 4-D, Number 4-light, Number 4, Number 5-light, Number 5-heavy, and Number 6;

(vii) gas-turbine fuel oils--i.e., Grade O-GT, Grade 1-GT, Grade 2-GT, Grade 3-GT, and Grade 4-GT;

(viii) illuminating oils--i.e., kerosene, mineral seal oil, long-time burning oils, 300 oil, and mineral colza oil;

(ix) lubricants--i.e., automotive and industrial lubricants;

(x) building materials--i.e., liquid asphalt and dust-laying oils;

(xi) insulating and waterproofing materials--i.e., transformer oils and cable oils; and

(xii) used oils--See definition for "used oil" in this section.

(B) For the purposes of this chapter, a "petroleum substance" shall include solvents or a combination or mixture of solvents (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 USC, §§6921, *et seq.))* and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere) i.e., Stoddard solvent, petroleum spirits, mineral spirits, petroleum ether, varnish makers' and painters' naphthas, petroleum extender oils, and commercial hexane.

(C) The following materials are not considered petroleum substances:

(i) polymerized materials, i.e., plastics, synthetic rubber, polystyrene, high and low density polyethylene;

(ii) animal, microbial, and vegetable fats;

(iii) food grade oils;

(iv) hardened asphalt and solid asphaltic materials--i.e., roofing shingles, roofing felt, hot mix (and cold mix); and

(v) cosmetics.

(110) Pile--Any noncontainerized accumulation of solid, nonflowing solid waste or hazardous waste that is used for processing or storage, and that is not a corrective action management unit or a containment building.

(111) Plasma arc incinerator--Any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(112) Post-closure order--An order issued by the commission for post-closure care of interim status units, a corrective action management unit unless authorized by permit, or alternative corrective action requirements for contamination commingled from Resource Conservation and Recovery Act and solid waste management units.

(113) Poultry--Chickens or ducks being raised or kept on any premises in the state for profit.

(114) Poultry carcass--The carcass, or part of a carcass, of poultry that died as a result of a cause other than intentional slaughter for use for human consumption.

(115) Poultry facility--A facility that:

(A) is used to raise, grow, feed, or otherwise produce poultry for commercial purposes; or

(B) is a commercial poultry hatchery that is used to produce chicks or ducklings.

(116) Primary exporter--Any person who is required to originate the manifest for a shipment of hazardous waste in accordance with the regulations contained in 40 Code of Federal Regulations Part 262, Subpart B, which are in effect as of November 8, 1986, or equivalent state provision, which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

(117) Processing--The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

(118) Publicly-owned treatment works (POTW)--Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality (as defined by the Clean Water Act, §502(4)). The definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(119) Qualified groundwater scientist--A scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(120) Receiving country--A foreign country to which a hazardous waste is sent for the purpose of treatment, storage, or disposal (except short-term storage incidental to transportation).

(121) Regional administrator--The regional administrator for the United States Environmental Protection Agency region in which the facility is located, or his designee.

(122) Remediation--The act of eliminating or reducing the concentration of contaminants in contaminated media.

(123) Remediation waste--All solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and Texas Water Code, §7.031 (Corrective Action Relating to Hazardous Waste). For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing corrective action for releases beyond the facility boundary under §335.166(5) of this title (relating to Corrective Action Program) or §335.167(c) of this title.

(124) Remove--To take waste, contaminated design or operating system components, or contaminated media away from a waste management unit, facility, or area to another location for treatment, storage, or disposal.

(125) Replacement unit--A landfill, surface impoundment, or waste pile unit:

(A) from which all or substantially all the waste is removed; and

(B) that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or United States Environmental Protection Agency or state approved corrective action.

(126) Representative sample--A sample of a universe or whole (e.g., waste pile, lagoon, groundwater) which can be expected to exhibit the average properties of the universe or whole.

(127) Run-off--Any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(128) Run-on--Any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(129) Saturated zone or zone of saturation--That part of the earth's crust in which all voids are filled with water.

(130) Shipment--Any action involving the conveyance of municipal hazardous waste or industrial solid waste by any means offsite.

(131) Sludge dryer--Any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating valve of the sludge itself, of 2,500 British thermal units per pound of sludge treated on a wet-weight basis.

(132) Small quantity generator--A generator who generates less than 1,000 kilograms of hazardous waste in a calendar month.

(133) Solid waste--

(A) Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities, but does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued in accordance with Texas Water Code, Chapter 26 (an exclusion applicable only to the actual point source discharge that does not exclude industrial wastewaters while they are being collected, stored, or processed before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment);

(ii) uncontaminated soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements. The material serving as fill may also serve as a surface improvement such as a structure foundation, a road, soil erosion control, and flood protection. Man-made materials exempted under this provision shall only be deposited at sites where the construction is in progress or imminent such that rights to the land are secured and engineering, architectural, or other necessary planning have been initiated. Waste disposal shall be considered to have occurred on any land which has been filled with man-made inert materials under this provision if the land is sold, leased, or otherwise conveyed prior to the completion of construction of the surface improvement. Under such conditions, deed recordation shall be required. The deed recordation shall include the information required under §335.5(a) of this title (relating to Deed Recordation of Waste Disposal), prior to sale or other conveyance of the property;

(iii) waste materials which result from activities associated with the exploration, development, or production of oil or gas or geothermal resources, as those activities are defined in this section, and any other substance or material regulated by the Railroad Commission of Texas in accordance with the Natural Resources Code, §91.101, unless such waste, substance, or material results from activities associated with gasoline plants, natural gas, or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, 42 United States Code, §§6901 *et seq.*, as amended; or

(iv) a material excluded by 40 Code of Federal Regulations (CFR) §261.4(a)(1) - (21), as amended through July 24, 2002 (67 FR 48393), subject to the changes in this clause, or by variance granted under §335.18 of this title (relating to Variances from Classification as a Solid Waste) and §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste). For the purposes of the exclusion under 40 CFR §261.4(a)(16), 40 CFR §261.38 is adopted by reference as amended through July 10, 2000 (65 FR 42292), and is revised as follows, with "subparagraph (A)(iv) under the definition of 'Solid Waste' in 30 TAC §335.1" meaning "subparagraph (A)(iv) under the definition of 'Solid Waste' in §335.1 of this title (relating to Definitions)":

(I) in the certification statement under 40 CFR §261.38(c)(1)(i)(C)(4), the reference to "40 CFR §261.38" is changed to "40 CFR §261.38, as revised under subparagraph (A)(iv) under the definition of 'Solid Waste' in 30 TAC §335.1," and the reference to "40 CFR §261.28(c)(10)" is changed to "40 CFR §261.38(c)(10)";

(II) in 40 CFR §261.38(c)(2), the references to "§260.10 of this chapter" are changed to "§335.1 of this title (relating to Definitions)," and the reference to "parts 264 or 265 of this chapter" is changed to "Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) or Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities)";

(III) in 40 CFR §261.38(c)(3) - (5), the references to "parts 264 and 265, or §262.34 of this chapter" are changed to "Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) and Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), or §335.69 of this title (relating to Accumulation Time)";

(IV) in 40 CFR §261.38(c)(5), the reference to "§261.6(c) of this chapter" is changed to "§335.24(e) and (f) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials)";

(V) in 40 CFR §261.38(c)(7), the references to "appropriate regulatory authority" and "regulatory authority" are changed to "executive director";

(VI) in 40 CFR §261.38(c)(8), the reference to "§262.11 of this chapter" is changed to "§335.62 of this title (relating to Hazardous Waste Determination and Waste Classification)";

(VII) in 40 CFR §261.38(c)(9), the reference to "§261.2(c)(4) of this chapter" is changed to §335.1(133)(D)(iv) " of this title (relating to Definitions)"; and

(VIII) in 40 CFR §261.38(c)(10), the reference to "implementing authority" is changed to "executive director."

(B) A discarded material is any material which is:

(i) abandoned, as explained in subparagraph (C) of this paragraph;

(ii) recycled, as explained in subparagraph (D) of this paragraph;

(iii) considered inherently waste-like, as explained in subparagraph (E) of this paragraph; or

(iv) a military munition identified as a solid waste in 40 CFR §266.202.

(C) Materials are solid wastes if they are abandoned by being:

(i) disposed of;

(ii) burned or incinerated; or

(iii) accumulated, stored, or processed (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

(D) Except for materials described in subparagraph (H) of this paragraph, materials are solid wastes if they are "recycled" or accumulated, stored, or processed before recycling as specified in this subparagraph. The chart referred to as Table 1 indicates only which materials are considered to be solid wastes when they are recycled and is not intended to supersede the definition of solid waste provided in subparagraph (A) of this paragraph.

(i) Used in a manner constituting disposal. Materials noted with an asterisk in Column 1 of Table 1 are solid wastes when they are:

(I) applied to or placed on the land in a manner that constitutes disposal; or

(II) used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste). However, commercial chemical products listed

in 40 CFR §261.33 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(ii) Burning for energy recovery. Materials noted with an asterisk in Column 2 of Table 1 are solid wastes when they are:

(I) burned to recover energy; or

(II) used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste). However, commercial chemical products, which are listed in 40 CFR §261.33, not listed in §261.33, but that exhibit one or more of the hazardous waste characteristics, or will be considered nonhazardous waste if disposed, are not solid wastes if they are fuels themselves and burned for energy recovery.

(iii) Reclaimed. Materials noted with an asterisk in Column 3 of Table 1 are solid wastes when reclaimed (except as provided under 40 CFR §261.4(a)(17)). Materials without an asterisk in Column 3 of Table 1 are not solid wastes when reclaimed.

(iv) Accumulated speculatively. Materials noted with an asterisk in Column 4 of Table 1 are solid wastes when accumulated speculatively.
Figure: 30 TAC §335.1(133)(D)(iv)

(E) Materials that are identified by the administrator of the EPA as inherently waste-like materials under 40 CFR §261.2(d) are solid wastes when they are recycled in any manner.

(F) Materials are not solid wastes when they can be shown to be recycled by being:

(i) used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed;

(ii) used or reused as effective substitutes for commercial products;

(iii) returned to the original process from which they were generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land. In cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at 40 CFR §261.4(a)(17) apply rather than this provision; or

(iv) secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(I) only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(II) reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(III) the secondary materials are never accumulated in such tanks for over 12 months without being reclaimed; and

(IV) the reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(G) Except for materials described in subparagraph (H) of this paragraph, the following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process, as described in subparagraph (F) of this paragraph:

(i) materials used in a manner constituting disposal, or used to produce products that are applied to the land;

(ii) materials burned for energy recovery, used to produce a fuel, or contained in fuels;

(iii) materials accumulated speculatively; or

(iv) materials deemed to be inherently waste-like by the administrator of the EPA, as described in 40 CFR §261.2(d)(1) and (2).

(H) With the exception of contaminated soils which are being relocated for use under §350.36 of this title (relating to Relocation of Soils Containing Chemicals of Concern for Reuse Purposes) and other contaminated media, materials that will otherwise be identified as nonhazardous solid wastes if disposed of are not considered solid wastes when recycled by being applied to the land or used as ingredients in products that are applied to the land, provided these materials can be shown to meet all of the following criteria:

(i) a legitimate market exists for the recycling material as well as its products;

(ii) the recycling material is managed and protected from loss as will be raw materials or ingredients or products;

(iii) the quality of the product is not degraded by substitution of raw material/product with the recycling material;

(iv) the use of the recycling material is an ordinary use and it meets or exceeds the specifications of the product it is replacing without treatment or reclamation, or if the recycling material is not replacing a product, the recycling material is a legitimate ingredient in a production process and meets or exceeds raw material specifications without treatment or reclamation;

(v) the recycling material is not burned for energy recovery, used to produce a fuel, or contained in a fuel;

(vi) the recycling material can be used as a product itself or to produce products as it is generated without treatment or reclamation;

(vii) the recycling material must not present an increased risk to human health, the environment, or waters in the state when applied to the land or used in products which are applied to the land and the material, as generated:

(I) is a Class 3 waste under Subchapter R of this chapter (relating to Waste Classification), except for arsenic, cadmium, chromium, lead, mercury, nickel, selenium, and total dissolved solids; and

(II) for the metals listed in subclause (I) of this clause:

(-a-) is a Class 2 or Class 3 waste under Subchapter R of this chapter; and

(-b-) does not exceed a concentration limit under §312.43(b)(3), Table 3 of this title (relating to Metal Limits); and

(viii) with the exception of the requirements under §335.17(a)(8) of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials):

(I) at least 75% (by weight or volume) of the annual production of the recycling material must be recycled or transferred to a different site and recycled on an annual basis; and

(II) if the recycling material is placed in protective storage, such as a silo or other protective enclosure, at least 75% (by weight or volume) of the annual production of the recycling material must be recycled or transferred to a different site and recycled on a biennial basis.

(I) Respondents in actions to enforce the industrial solid waste regulations who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so and that the recycling activity is legitimate and beneficial.

(J) Materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under 40 CFR §261.3(c) unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

(K) Other portions of this chapter that relate to solid wastes that are recycled include §335.6 of this title (relating to Notification Requirements), §§335.17 - 335.19 of this title, §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities).

(134) Sorbent--A material that is used to soak up free liquids by either adsorption or absorption, or both. Sorb means to either adsorb or absorb, or both.

(135) Spill--The accidental spilling, leaking, pumping, emitting, emptying, or dumping of solid waste or hazardous wastes or materials which, when spilled, become solid waste or hazardous wastes into or on any land or water.

(136) Staging pile--An accumulation of solid, non-flowing remediation waste, as defined in this section, that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles must be designated by the executive director according to the requirements of 40 Code of Federal Regulations §264.554, as adopted by reference under §335.152(a) of this title (relating to Standards).

(137) Storage--The holding of solid waste for a temporary period, at the end of which the waste is processed, disposed of, recycled, or stored elsewhere.

(138) Sump--Any pit or reservoir that meets the definition of tank in this section and those troughs/trenches connected to it that serve to collect solid waste or hazardous waste for transport to solid waste or hazardous waste treatment, storage, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(139) Surface impoundment or impoundment--A facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well or a corrective action management unit. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(140) Tank--A stationary device, designed to contain an accumulation of solid waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

(141) Tank system--A solid waste or hazardous waste storage or processing tank and its associated ancillary equipment and containment system.

(142) TEQ--Toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

(143) Thermal processing--The processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.")

(144) Thermostat--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(145) Totally enclosed treatment facility--A facility for the processing of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during processing. An example is a pipe in which acid waste is neutralized.

(146) Transfer facility--Any transportation-related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous or industrial solid waste are held during the normal course of transportation.

(147) Transit country--Any foreign country, other than a receiving country, through which a hazardous waste is transported.

(148) Transport vehicle--A motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle. Vessel includes every description of watercraft, used or capable of being used as a means of transportation on the water.

(149) Transporter--Any person who conveys or transports municipal hazardous waste or industrial solid waste by truck, ship, pipeline, or other means.

(150) Treatability study--A study in which a hazardous or industrial solid waste is subjected to a treatment process to determine:

(A) whether the waste is amenable to the treatment process;

(B) what pretreatment (if any) is required;

(C) the optimal process conditions needed to achieve the desired treatment;

(D) the efficiency of a treatment process for a specific waste or wastes; or

(E) the characteristics and volumes of residuals from a particular treatment process. Also included in this definition for the purpose of 40 Code of Federal Regulations §261.4(e) and (f) (§§335.2,

335.69, and 335.78 of this title (relating to Permit Required; Accumulation Time; and Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)) exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A treatability study is not a means to commercially treat or dispose of hazardous or industrial solid waste.

(151) Treatment--To apply a physical, biological, or chemical process(es) to wastes and contaminated media which significantly reduces the toxicity, volume, or mobility of contaminants and which, depending on the process(es) used, achieves varying degrees of long-term effectiveness.

(152) Treatment zone--A soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transferred, or immobilized.

(153) Underground injection--The subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well.")

(154) Underground tank--A device meeting the definition of tank in this section whose entire surface area is totally below the surface of and covered by the ground.

(155) Unfit-for-use tank system--A tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or processing solid waste or hazardous waste without posing a threat of release of solid waste or hazardous waste to the environment.

(156) Universal waste--Any of the hazardous wastes defined as universal waste under §335.261(b)(13)(F) of this title (relating to Universal Waste Rule) that are managed under the universal waste requirements of Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule).

(157) Universal waste handler--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(158) Universal waste transporter--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(159) Unsaturated zone or zone of aeration--The zone between the land surface and the water table.

(160) Uppermost aquifer--The geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected within the facility's property boundary.

(161) Used oil--Any oil that has been refined from crude oil, or any synthetic oil, that has been used, and, as a result of such use, is contaminated by physical or chemical impurities. Used oil fuel includes any fuel produced from used oil by processing, blending, or other treatment. Rules applicable to nonhazardous used oil, oil characteristically hazardous from use versus mixing, conditionally exempt small quantity generator hazardous used oil, and household used oil after collection that will be recycled are found in Chapter 324 of this title (relating to Used Oil Standards) and 40 Code of Federal Regulations Part 279 (Standards for Management of Used Oil).

(162) Wastewater treatment unit--A device which:

(A) is part of a wastewater treatment facility subject to regulation under either the Federal Water Pollution Control Act (Clean Water Act), 33 United States Code, §§466 *et seq.*, §402 or §307(b), as amended;

(B) receives and processes or stores an influent wastewater which is a hazardous or industrial solid waste, or generates and accumulates a wastewater treatment sludge which is a hazardous or industrial solid waste, or processes or stores a wastewater treatment sludge which is a hazardous or industrial solid waste; and

(C) meets the definition of tank or tank system as defined in this section.

(163) Water (bulk shipment)--The bulk transportation of municipal hazardous waste or Class 1 industrial solid waste which is loaded or carried on board a vessel without containers or labels.

(164) Well--Any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(165) Zone of engineering control--An area under the control of the owner/operator that, upon detection of a solid waste or hazardous waste release, can be readily cleaned up prior to the release of solid waste or hazardous waste or hazardous constituents to groundwater or surface water.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. PERMITTING STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES

30 TAC §335.152

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code and other laws of this state; and under Texas Health and Safety Code, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the Texas Health and Safety Code.

The adopted amendment implements Texas Health and Safety Code, Chapter 361.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER H. STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND SPECIFIC TYPES OF FACILITIES
DIVISION 2. HAZARDOUS WASTE BURNED FOR ENERGY RECOVERY

30 TAC §335.221

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code and other laws of this state; and under Texas Health and Safety Code, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the Texas Health and Safety Code.

The adopted amendment implements Texas Health and Safety Code, Chapter 361.

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SUBCHAPTER O. LAND DISPOSAL RESTRICTIONS

30 TAC §335.431

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code and other laws of this state; and under Texas Health and Safety Code, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the Texas Health and Safety Code.

The adopted amendment implements Texas Health and Safety Code, Chapter 361.

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SUBCHAPTER R. WASTE CLASSIFICATION

30 TAC §335.504

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code and other laws of this state; and under Texas Health and Safety Code, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the Texas Health and Safety Code.

The adopted amendment implements Texas Health and Safety Code, Chapter 361.

§335.504. Hazardous Waste Determination.

A person who generates a solid waste must determine if that waste is hazardous using the following method:

(1) Determine if the material is excluded from being a solid waste or hazardous waste per §335.1 of this title (relating to Definitions) or identified in 40 Code of Federal Regulations (CFR) Part 261, Subpart A, as amended through February 24, 2005 (70 FR 9138).

(2) If the material is a solid waste, determine if the waste is listed as, or mixed with, or derived from a listed hazardous waste identified in 40 Code of Federal Regulations (CFR) Part 261, Subpart D, as amended through February 24, 2005 (70 FR 9138).

(3) If the material is a solid waste, determine whether the waste exhibits any characteristics of a hazardous waste as identified in 40 CFR Part 261, Subpart C, as amended through March 13, 2002 (67 FR 11251).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 27, 2007.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

The Texas Parks and Wildlife Department (the department) adopts amendments to §§65.309, 65.312, 65.313, 65.315, and 65.319; new §65.301 and §65.310; and the repeal of §65.310, concerning the Migratory Game Bird Proclamation. Section 65.309 and §65.315 are adopted with changes to the proposed text as published in the May 25, 2007, issue of the *Texas Register* (32 TexReg 2829). The amendments to §§65.312, 65.313, and 65.319; new §65.301 and §65.310; and the repeal of §65.310 are adopted without changes to the proposed text and will not be republished.

The change to §65.309, concerning Definitions, alters paragraph (11) to clarify that for the purposes of the subchapter, the federal definition of migratory bird preservation facility includes a cold storage or processing facility as defined in Parks and Wildlife Code, §42.001. The change is necessary to avoid confusion resulting from differential interpretation.

The change to §65.315, concerning Open Seasons and Bag and Possession Limits--Early Season creates a nine-day season for teal in the High Plains Mallard Management Unit and clarifies terminology by adding language to indicate that the term "gallinules" includes moorhens and purple gallinules, and that "common snipe" includes jacksnipe. The change is necessary to provide hunter opportunity and to prevent confusion resulting from differential interpretation.

The amendments are generally necessary to implement commission policy to provide the greatest hunter opportunity possible, consistent with hunter preference for season starting dates and segment lengths, under frameworks issued by the Service. It is the policy of the commission to adopt the most liberal provisions possible, consistent with hunter preference, under the frameworks in order to provide maximum hunter opportunity.

New §65.301, concerning Applicability, establishes that the subchapter governs all migratory bird hunting in the state. The new section also clarifies that nothing in the subchapter is to be construed to supersede the requirements of Title 50, Part 20, of the United States Code of Federal Regulations (50 CFR Part 20). Under the Migratory Bird Treaty Act of 1918, the U.S. Fish and Wildlife Service (Service) is responsible for establishing the basic regulatory frameworks for the management of migratory birds in the United States, including provisions governing the hunting of migratory birds, such as season lengths, bag and possession limits, means and methods, and documentation requirements. Each state may adopt rules to implement the federal regulations, but may not adopt rules that are inconsistent with the federal rules. The amendment is necessary for purposes of clarity and edification.

The amendment to §65.309, concerning Definitions, adds definitions that are currently contained either in §65.3, concerning the Statewide Hunting and Fishing Proclamation, or 50 CFR Part 20. The provisions have been added in order to create a consolidated body of regulations in a single subchapter. Each of the definitions is currently in effect as part of state or federal law, so the effect of the amendment is nonsubstantive. The amendment is necessary for purposes of clarity and edification.

For many years, §65.310, which is being repealed, contained what is essentially a summary or abstract of the federal regulations. New §65.310 is a verbatim repetition of federal rule language concerning illegal means and methods, with slight conforming changes where necessary to accommodate terminological variations or to provide clarification. For instance, the federal regulation specifies that no pistol or rifle may be use to take migratory game birds. New §65.310(1) as adopted adds language to clarify that the prohibition includes airguns. The department notes that the action is nonsubstantive; it neither creates new or additional provisions nor materially alters provisions of the federal or state laws currently in effect. The amendment is necessary for purposes of clarity and edification.

The amendment to §65.312, concerning Possession of Migratory Game Birds, clarifies that a properly completed wildlife resource document (WRD) satisfies the tagging requirements of 50 CFR Part 20. The amendment is necessary to ensure that the regulations are clear as to the legal requirements concerning the possession and documentation of migratory game birds.

The amendment to §65.313, concerning General Rules, adds a new subsection (d) to clarify a federal provision, and a new subsection (e) to adopt certain federal provisions by reference.

Under Parks and Wildlife Code, §64.007, no person may possess a live game bird except as authorized by the code. Under Parks and Wildlife Code, §62.011, it is an offense for any person who wounds a game bird not to make a reasonable effort to retrieve the bird and include it in the daily bag limit. New §65.313(d) clearly states that wounded birds must be immediately killed and be made part of the daily bag limit. The amendment is necessary for purposes of clarity and edification.

The amendment would also create a new subsection (e) to adopt certain federal regulations by reference. The department has determined that 50 CFR Part 20 Subparts E (Transportation within the United States), F (Exportation), G (Importation), and H (Federal, State, and Foreign Law) do not offer any conflict of interpretation or pose a possibility for confusion as written and thus do not need to be reproduced verbatim in state regulations. Therefore, the department has adopted them by reference. The amendment is necessary to avoid unnecessary and lengthy reproduction of federal rules.

The amendment to §65.315, concerning Open Seasons and Bag and Possession Limits--Early Season, adjusts the season dates for early-season species of migratory game birds to account for calendar-shift (i.e., to ensure that seasons open on the desired day of the week, since dates from a previous year do not fall on the same days in following years). The amendment also implements a 16-day teal season to run from September 15 - 30, 2007 in all areas of the state other than the High Plains Mallard Management Unit, where there will be a nine-day season running from September 15 - 23, 2007. The amendment is necessary not only to establish season dates and bag limits, but to ensure that seasons fall in such a way as to provide the greatest hunting opportunity possible.

The amendment to §65.319, concerning Extended Falconry Season--Early Season Species, adjusts season dates for the take of early-season species of migratory game birds by means

of falconry to reflect calendar shift. The amendment is necessary not only to establish season dates and bag limits, but to ensure that seasons fall in such a way as to provide the greatest hunting opportunity possible.

New §65.301 will function by establishing that the subchapter governs all migratory bird hunting in the state in conjunction with the requirements of Title 50, Part 20, of the United States Code of Federal Regulations (50 CFR Part 20).

The amendment to §65.309 will function by adding definitions that are necessary for compliance with and enforcement of the rules.

New §65.310 will function by making the state standards means and methods identical to federal standards to eliminate ambiguity.

The amendment to §65.312 will function by clarifying the documentation requirements for persons in possession of migratory birds.

The amendment to §65.313 will function by clarifying that wounded birds must be immediately killed and be made part of the daily bag limit, and by adopting federal rules by reference.

The amendment to §65.315 will function by establishing the seasons and bag limits for the hunting of early-season species of migratory game birds.

The amendment to §65.319 will function by establishing the season length and bag limits for the take of early-season species of migratory game birds by means of falconry.

The department received five comments opposing adoption of the portion of the proposed rule that provides for consistency with federal regulations. Of the four comments, two offered a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, are as follows.

One commenter opposed adoption and stated that the department should be able to close, open, or extend seasons on game birds depending on rise or decline of bird populations. The department disagrees with the comment and responds that the maximum season length is set by federal law and cannot be lengthened by the state. No changes were made as a result of the comment.

One commenter opposed adoption and stated personal opposition to the hunting, trapping and snaring of any animals. The department disagrees with the comment and responds that state and federal law both provide for the lawful hunting of certain species of migratory birds under the tenets of sound biological science. No changes were made as a result of the comment.

The department received 88 comments supporting adoption of the proposed rule.

The department received 41 comments opposing the portion of the proposed rule establishing dove seasons. Of the 41 comments, 26 offered a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, are as follows.

One commenter opposed adoption and stated a preference for the winter segment in the North Zone to be the same as that in the Central Zone. The commenter stated that good dove hunting is missed in North Texas because the season is closed. The department disagrees with the comment and responds that hunter surveys indicate that a shorter season and higher bag limit is preferred by hunters in the North Zone. No changes were made as a result of the comment.

One commenter opposed adoption and stated a preference for more days in the winter segment in the Central Zone. The commenter stated that in many areas of the Central Zone, doves do not appear in larger numbers until several cold fronts have moved through, and the hunting is better at that time. The department disagrees with the comment and responds that hunter preference is for the season structure as adopted. Hunter surveys indicate central zone dove hunters prefer the longest season length allowed by federal regulation (70 days). The department is not permitted to add more segments or days to the winter season without taking those days from the first or end of the first season segment. Central zone hunters have expressed concern about removal of any days from the beginning or end of the first season segment. The department also responds that dove numbers are not dependent on the dates selected for hunting opportunity, but on various factors of the natural world that are beyond the control of the department.

Two commenters opposed adoption and stated that the special white-winged dove season should be open on Monday Labor Day in order to provide an additional day of hunting on opening weekend. The department disagrees with the comments and responds that hunter preference is for the earliest possible opener allowed under federal frameworks, which is September 1, irrespective of the day of the week it may fall on. Federal frameworks allow four days between September 1 - 19 for the special white-winged dove season. Creating a three-day opening in those years when September 1 falls on a Friday would require that the fourth day either be added during the week or taken as a one-day opportunity on a weekend. The department believes that running the season past the opening weekend and into the following week or setting a one-day opportunity by itself would reduce hunter opportunity and participation. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a statewide bag limit of 10 birds. The department disagrees with the comment and responds that the Service authorizes two season structures, a 70-day season with a 12-bird bag, or a 60-day season with a 15-bird bag. Although the department may reduce bag limits below those authorized by the Service, commission policy is to adopt the most liberal bag limits possible under frameworks issued by the Service. No changes were made as a result of the comment.

Six commenters opposed adoption and stated a preference for a longer season and a lower bag limit in the North Zone. The department disagrees with the comments and responds that hunter surveys indicate a preference for the option offered by the Service for a shorter season with a higher bag limit. No changes were made as a result of the comments.

One commenter opposed adoption and stated that there should be a statewide opening day of September 1 to take advantage of the steadily growing white-wing numbers in the South Zone, with a mourning dove bag limit of two in the South Zone until September 20. The commenter stated that this would protect late-nesting mourning dove while allowing for incidental, honest mistakes by hunters. The department disagrees with the comment and responds that the September 1 opening date is approved by the Service only for the North and Central zones, and that commission policy is to adopt the most liberal bag limits possible under the frameworks issued by the Service. The department also notes that the Service will require extensive nesting chronology

and survival studies of mourning doves in South Texas before allowing the season to open before September 20 in the South Zone. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the current zone boundaries south of I-10 do not work for hunters. The commenter stated that doves get driven through the area too quickly by early cold fronts and that the use of natural landmarks like rivers would be better because birds don't use highway maps when they migrate. The department disagrees with the comment and responds that changes to the zone boundaries are not possible at this time because alterations to zone boundaries must receive prior approval from the Service, and that dove movements are dependent on various factors of the natural world beyond the control of the department. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the South Zone season should run later in January to avoid conflicts with deer hunters. The department disagrees with the comment and responds that hunter preference is for the earliest season possible. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a 15-bird bag limit in the Central Zone. The department disagrees with the comment and responds that a 15-bird bag limit is only possible if a shorter season is selected. Hunter surveys indicate a preference for a shorter season with a higher bag limit in the Central Zone. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should run later in the North Zone. The commenter stated that there are more doves present during the end of December than during most of September and October and it would be nice to be able to hunt them while hunting quail. The commenter also stated that the season could be lengthened by reducing the bag limit to 12 birds, which would simplify things for law enforcement and reduce confusion with hunters. The commenter further stated that the three-bird difference would not reduce participation of the largely urban hunting population that only hunt the opening weekends. The department disagrees with the comment and responds that hunter surveys indicate a preference for a shorter season and higher bag limit in the North Zone. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the Central Zone season should be identical to the North Zone season (i.e., 15-bird bag limit and no winter segment). The department disagrees with the comment and responds that hunter surveys indicate a preference for a shorter season with a higher bag limit in the North Zone and a longer season with a lower bag limit in the Central Zone. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the North Zone needs a late segment like those in the central and south zones. The department disagrees with the comment and responds that hunter preference in the North Zone is for a season without splits. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the winter segment in the Central Zone should run to the first weekend in January instead of ending on the 4th, because the commenter hunts on property allows only weekend hunting. The department disagrees with the comment and responds that commission policy is to set the winter segment in such a fashion as to allow greater hunting opportunity during the Christmas break, when more people, especially youth, are able to take advantage of opportunity. A Central Zone survey of hunters indicates that ending the first segment before October 30 was not preferred. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the Central Zone season should be implemented statewide. The department disagrees with the comment and responds that the three-zone structure of dove seasons in Texas offers the greatest opportunity for the department to select season dates that correspond to the availability of the resource and the preference of hunters. No changes were made as the result of the comment.

One commenter opposed adoption and stated that the season in the South Zone should open on a Saturday for greater participation. The department disagrees with the comments and responds that hunter preference is for the earliest possible opener allowed under federal frameworks, which is September 1, irrespective of the day of the week it may fall on. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the South Zone should open on September 1 or that Matagorda, Wharton, and Jackson counties should be made part of the Central Zone. The department disagrees with the comment and responds that the department cannot alter the South Zone beyond the boundaries approved by the Service. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the winter segment in the South Zone should end on January 13 because children are in school and it is not worth traveling 300+ miles for just one day of hunting. The department disagrees with the comment and responds that hunter preference in the South Zone is for the earliest season possible, and that the frameworks provided by the Service do not allow sufficient days for the both the first and winter season segments to end on a Saturday this year. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the Central Zone should be eliminated. The department disagrees with the comment and responds that such a change is not possible at this time without prior approval by the Service. Central zone hunter preferences are clearly distinct from North and South Zone hunters, who have expressed a preference for a September 1 opening versus September 20 opening in the South Zone. No changes were made as a result of the comment.

One commenter opposed adoption and stated that they did not approve of the harming and killing of animals. The department disagrees with the comment and responds that it is commission policy to provide hunting opportunity.

One commenter opposed adoption and stated that the early segment in the Central Zone should close the final weekend of October and the remaining two days should be added to the end of the winter segment so the season would end January 6, 2008. The department disagrees with closing the first segment on the last Sunday in October in order to end the winter season segment on a Sunday. The final complete weekend in October could end as early as October 25 and Central Zone hunters have expressed preferences for extending the season as long as possible in October. In only 1 out of 7 years would the 'saved' days be sufficient to extend through a complete weekend in January. No changes were made as a result of this comment.

One commenter opposed adoption and stated that the South Zone opener should be one week later or the special white wing area should be expanded to include all or at least more of the South Zone. The commenter stated that the current season is too late for the central and northern sections of the South Zone to have more than one or two weekends of decent hunting before the weather cools and the bird move south. The department disagrees with the comment and responds that hunter preference is for the earliest hunting opportunity possible, that the special white-wing dove area cannot be changed without prior approval by the Service, and that dove numbers are not dependent on the dates selected for hunting opportunity, but on various factors of the natural world that are beyond the control of the department.

One commenter opposed adoption and stated that the seasons in the North and Central zones should open September 8th and end October 30th. The department disagrees with the comment and responds that North and Central Zone hunter surveys indicate that the majority of hunters support opening the season as early as possible regardless of the day of the week that happens to fall upon. No changes were made as a result of this comment.

One commenter opposed adoption and stated that there should be a statewide season beginning September 1. The commenter stated that because of the weather at that time of year, there are only a few days of good hunting anywhere. The department disagrees with the comment and responds that the Service gives the option to open the season September 1 only for the North and Central zones. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be all-day hunting during the special white-wing season. The department disagrees with the comment and responds that all-day hunting during the special white-wing season is not authorized by the Service during the five years of an ongoing study to determine the impacts of extension of the boundaries of the special white-winged dove area to Interstate Highway 35. The department is currently in the third year of that study. Half-day shooting hours have been implemented because of concern for historically suppressed rural whitewing populations in the Lower Rio Grande Valley. If the five-year study reveals that mourning dove harvest has not increased relative to the harvest before the boundary expansion, the department will petition the Service to allow all day-hunting. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that the boundaries of the special white-winged dove area should be reconfigured to eliminate the area where they hunt. The commenters stated that only mourning doves were present the first two complete weekends in September, and that they preferred that the four additional days be added to the end of the winter season segment. The department disagrees with the comment and responds that the special whitewing area boundary is defined in federal regulation and can't be changed without Service approval. The Service will not approve of any regulation changes including boundary modifications until a study of the impacts of extension of this area to Interstate Highway 35 is completed. In addition, it is unknown whether the majority of hunters in this area support elimination of the special season. No changes were made as a result of these comments.

The department received 103 comments supporting adoption of the portion of the proposed rule that establish dove seasons and bag limits for dove.

The department received one comment opposing adoption of the portion of the proposed rule that establishes seasons and bag limits for gallinules. One commenter offered and explanation or rationale for opposing adoption. The commenter opposed adoption and stated that the fewer birds killed, the better. The department disagrees with the comment and responds that both federal and state law authorizes the hunting of gallinules within sound biological limits. No changes were made as a result of the comment.

The department received 44 comments supporting adoption of the portion of the proposed amendment establishing seasons and bag limits for gallinules.

The department received three comments opposing adoption of the portion of the proposed rule that establishes seasons and bag limits for snipe. Of the three commenters, two offered a specific reason or explanation for opposing adoption. Those comments, accompanied by the department's response to each, are as follows.

One commenter opposed adoption and stated that the season should open one month sooner. The department disagrees with the comment and responds that snipe seasons are set to overlap as much of the goose, duck, crane, rail, and gallinule seasons as possible, in order to allow concurrent hunting. No changes were made as a result of the comment.

One commenter opposed adoption and stated disapproval of hunting any bird. The department disagrees with the comment and responds that state and federal law both provide for the lawful hunting of certain species of migratory birds under the tenets of sound biological science. No changes were made as a result of the comment.

The department received 47 comments supporting adoption of the portion of the proposed rule that established seasons and bag limits for snipe.

The department received two comments opposing adoption of the proposed amendment that establishes seasons and bag limits for rail. Both commenters offered a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, are as follows.

One commenter opposed adoption and stated that the season should be longer. The department disagrees with the comment and responds that federal law allows a maximum season length of 107 days. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the fewer birds killed, the better. The department disagrees with the comment and responds that both federal and state law authorizes the hunting of gallinules within sound biological parameters. No changes were made as a result of the comment.

The department received 45 comments supporting adoption of the proposed amendment that establishes seasons and bag limits for rail.

The department received 13 comments opposing adoption of the portion of the proposed rule that establishes seasons and bag limits for teal. Of the 13 comments, nine commenters offered a specific reason or explanation for opposing adoption.

One commenter opposed adoption and stated that the bag limit should be reduced to three birds and the season should run from September 22-30. The department disagrees with the comment and responds that hunter preference is for the season to open as early as possible and commission policy is to allow the most

liberal bag limit possible under the federal frameworks issued by the Service. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season is too short, given the abundance of birds. The department disagrees with the comment and responds that the Service has not authorized a longer season. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should be longer and the bag limit should be five or six birds. The department disagrees with the comment and responds that the bag limit for teal is the maximum allowed under federal frameworks issued by the Service. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit should be five birds. The department disagrees with the comment and responds that the bag limit for teal is the maximum allowed under federal frameworks issued by the Service. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that the bag limit should be five birds. The department disagrees with the comment and responds that the bag limit for teal is the maximum allowed under federal frameworks issued by the Service. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit should be six birds. The department disagrees with the comment and responds that the bag limit for teal is the maximum allowed under federal frameworks issued by the Service. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should begin second Saturday in September because the migration occurs then. The department disagrees with the comment and responds that hunter preference is for the season to open as early as possible. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the lower the bag limit the better. The department disagrees with the comment and responds that commission policy is to adopt the most liberal bag limits allowed under the frameworks issued by the Service. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the teal limit should be raised because the total population continues to rise well above the long term average, the vast majority of blue wing are harvested during the early teal season, and the early season can be used to effectively manage this species. The commenter also stated that the total number of blue wing harvested in Texas is insignificant when the overall population is considered. The department disagrees with the comment and responds that the bag limit for teal is the maximum allowed under federal frameworks issued by the Service. No changes were made as a result of the comment.

The department received 113 comments supporting adoption of the portion of the rule affecting seasons and bag limits for teal.

31 TAC §§65.301, 65.309, 65.310, 65.312, 65.313, 65.315, 65.319

The amendments and new sections are adopted under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

§65.309. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings assigned in Subchapter A of this chapter (relating to Statewide Hunting and Fishing Proclamation).

(1) Baited area--Any area where salt, grain, or other feed has been placed, exposed, deposited, distributed, or scattered, if that salt, grain, or other feed could serve as a lure or attraction for migratory game birds to, on, or over areas where hunters are attempting to take them. Any such area will remain a baited area for ten days following the complete removal of all such salt, grain, or other feed.

(2) Baiting--The direct or indirect placing, exposing, depositing, distributing, or scattering of salt, grain, or other feed that could serve as a lure or attraction for migratory game birds to, on, or over areas where hunters are attempting to take them.

(3) Daily bag limit--The quantity of a species of migratory game bird that may be lawfully taken in one day.

(4) Day--A 24-hour period of time that begins at midnight and ends at midnight.

(5) Dark geese--Canada, white-fronted, and all other geese except light geese.

(6) Harvest Information Program (HIP)--A mandatory certification process for all persons who hunt or intend to hunt migratory game birds. To be certified, a person must answer a series of questions about their migratory game-bird hunting habits.

(7) Legal shotgun--A shotgun not larger than 10 gauge, fired from the shoulder, and incapable of holding more than three shells. (Guns capable of holding more than three shells must be plugged with a one-piece filler which is incapable of removal without disassembling the gun, so the gun's total capacity does not exceed three shells.)

(8) Light geese--Snow, blue, and Ross' geese.

(9) Livestock--Cattle, horses, mules, sheep, goats, and hogs.

(10) Manipulation--The alteration of natural vegetation or agricultural crops, including but not limited to mowing, shredding, discing, rolling, chopping, trampling, flattening, burning, and herbicide treatments. Manipulation does not include the distributing or scattering of grain, seed, or other feed after removal from or storage on the field where grown.

(11) Migratory bird preservation facility--A stationary facility designed and constructed to store or process game animals and game birds. For the purposes of this subchapter, a migratory bird preservation facility is a cold storage or processing facility as defined by Parks and Wildlife Code, §42.001.

(12) Natural vegetation--Any non-agricultural, native, or naturalized plant species that grows at a site in response to planting or from existing seeds or propagule. Natural vegetation does not include planted millet. However, planted millet that grows on its own in subsequent years after the planting is considered natural vegetation.

(13) Nontoxic shot--Any shot approved by the director, U.S. Fish and Wildlife Service.

(14) Normal agricultural practice--A normal agricultural planting, harvesting, or post-harvest manipulation, or livestock feeding conducted in accordance with official recommendations of State

Extension Specialists of the Cooperative Extension Service of the U.S. Department of Agriculture.

(15) Normal soil stabilization practice--A planting for agricultural soil erosion control or post-mining land reclamation conducted in accordance with official recommendations of State Extension Specialists of the Cooperative Extension Service of the U.S. Department of Agriculture.

(16) Paraplegic--An individual afflicted with paralysis of the lower half of the body with involvement of both legs, usually due to disease of or injury to the spinal cord.

(17) Possession limit--The maximum number of a species of migratory game bird that may be lawfully possessed at one time.

(18) Personal residence (personal abode)--One's principal or ordinary home or dwelling place. The term does not include a temporary or transient place of residence or dwelling such as a hunting club, or any club house, cabin, tent, or trailer house used as a hunting club, or any hotel, motel, or rooming house used during a hunting, pleasure, or business trip.

(19) Sinkbox--Any type of low floating device having a depression which affords the hunter a means of concealing himself below the surface of water.

(20) Waterfowl--Ducks (including teal), geese, mergansers, and coots.

§65.315. Open Seasons and Bag and Possession Limits--Early Season.

(a) Rails.

(1) Dates: September 15 - 30, 2007 and November 3 - December 26, 2007.

(2) Daily bag and possession limits:

(A) king and clapper rails: 15 in the aggregate per day; 30 in the aggregate in possession.

(B) sora and Virginia rails: 25 in the aggregate per day; 25 in the aggregate in possession.

(b) Dove seasons.

(1) North Zone.

(A) Dates: September 1 - October 30, 2007.

(B) Daily bag limit: 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 30 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(2) Central Zone.

(A) Dates: September 1 - October 30, 2007 and December 26, 2007 - January 4, 2008.

(B) Daily bag limit: 12 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 24 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(3) South Zone.

(A) Dates: Except in the special white-winged dove area as defined in §65.314 of this title (relating to Zones and Boundaries for Early Season Species), September 21 - November 11, 2007 and December 26, 2007 - January 12, 2008.

(B) Daily bag limit: 12 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 24 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(4) Special white-winged dove area.

(A) Dates: September 1, 2, 8, and 9, 2007.

(i) Daily bag limit: 12 white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than four mourning doves and two white-tipped doves per day;

(ii) Possession limit: 24 white-winged doves, mourning doves, and white-tipped doves in the aggregate to include no more than eight mourning doves and four white-tipped doves in possession.

(B) Dates: September 21 - November 11, 2007 and December 26, 2007 - January 8, 2008.

(i) Daily bag limit: 12 white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than two white-tipped doves per day;

(ii) Possession limit: 24 white-winged doves, mourning doves, and white-tipped doves in the aggregate to include no more than four white-tipped doves in possession.

(c) Gallinules.

(1) Dates: September 15 - 30, 2007 and November 3 - December 26, 2007.

(2) Daily bag and possession limits: 15 in the aggregate per day; 30 in the aggregate in possession.

(d) September teal-only season.

(1) Dates:

(A) High Plains Mallard Management Unit: September 15 - 23, 2007.

(B) Remainder of the state: September 15 - 30, 2007.

(2) Daily bag and possession limits: four in the aggregate per day; eight in the aggregate in possession.

(e) Red-billed pigeons, and band-tailed pigeons. No open season.

(f) Shorebirds. No open season.

(g) Woodcock: December 18, 2007 - January 31, 2008. The daily bag limit is three. The possession limit is six.

(h) Wilson's snipe (Common snipe): November 3, 2007 - February 17, 2008. The daily bag limit is eight. The possession limit is 16.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 24, 2007.

TRD-200703194

Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: August 13, 2007
Proposal publication date: May 25, 2007
For further information, please call: (512) 389-4775

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31 TAC §65.310

The repeal is adopted under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 24, 2007.

TRD-200703193
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: August 13, 2007
Proposal publication date: May 25, 2007
For further information, please call: (512) 389-4775

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PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 356. GROUNDWATER MANAGEMENT

SUBCHAPTER B. DESIGNATION OF GROUNDWATER MANAGEMENT AREAS

31 TAC §356.23

The Texas Water Development Board (the board) adopts an amendment to §356.23 to 31 TAC Chapter 356 concerning Groundwater Management, Subchapter B, Designation of Groundwater Management Areas, without changes to the proposed text as published in the June 8, 2007, issue of the *Texas Register* (32 TexReg 3168) and will not be republished. This section designates and delineates groundwater management areas (GMAs) as required by statute.

The board adopts an amendment to §356.23 to respond to a request to change the boundary lines for the previously designated and delineated groundwater management areas. Additionally, a software update results in seven digital files. The seven updated digital files collectively constituting a data set delineating the corrected groundwater management area boundary lines are adopted by reference. A CD-ROM containing the data is located in the offices of the board and is on file with the Secretary of State, Texas Register. The updated CD-ROM contains all of the geographic information system data used to create the boundaries as well as software and instructions on how to locate a specific area by coordinates or other means on a digital map. The same information can also be found on the board's web site at http://www.twdb.state.tx.us.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under the authority of the Texas Water Code, Chapter 6, §6.101, which provides the board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, as well as under the authority of Texas Water Code, Chapter 35, §35.004, which provides that the Texas Water Development Board shall designate groundwater management areas covering all major and minor aquifers in the State.

The statutory provisions affected by the adopted amendments are Texas Water Code, Chapter 35.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 30, 2007.

TRD-200703325
Robert Flores
Attorney
Texas Water Development Board
Effective date: August 19, 2007
Proposal publication date: June 8, 2007
For further information, please call: (512) 463-8249

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER A. REGULATIONS GOVERNING HAZARDOUS MATERIALS

37 TAC §4.1

The Texas Department of Public Safety adopts amendments to Chapter 4, Subchapter A, §4.1, concerning Regulations Governing Hazardous Materials, without changes to the proposed text as published in the June 22, 2007, issue of the *Texas Register* (32 TexReg 3836).

Adoption of the amendments to §4.1 is necessary in order to ensure that the Federal Hazardous Material Regulations, incorporated by reference in the section reflect all amendments and interpretations issued through June 1, 2007.

On July 10, 2007, the department held a public hearing to receive comments from all interested persons regarding adoption of the amendments. Mr. Douglas Brodie, Vice President-Government Affairs, Compliance Safety Systems appeared at the public hearing; however, he was interested in discussing other issues not related to this adoption.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.018, which authorizes the director to adopt all or part of the federal hazardous materials rules by reference; and Texas Transportation Code, §644.051, which authorizes the director to adopt all or part of the federal safety regulations by reference.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 27, 2007.

TRD-200703256
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: August 16, 2007
Proposal publication date: June 22, 2007
For further information, please call: (512) 424-2135

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SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §§4.11, 4.12, 4.15, 4.21

The Texas Department of Public Safety adopts amendments to Chapter 4, Subchapter B, §§4.11, 4.12, 4.15, and 4.21 concerning Regulations Governing Transportation Safety, without changes to the proposed text as published in the June 22, 2007, issue of the *Texas Register* (32 TexReg 3837).

Adoption of the amendments to §4.11 is necessary in order to update the rule so that it reflects June 1, 2007 in subsection (a). The amendment is necessary in order to ensure that the Federal Motor Carrier Safety Regulations, incorporated by reference in this section, reflect all amendments and interpretations issued through that particular date for the subchapter.

Adoption of the amendments to §4.12 are necessary in order to add clarification to subsection (a)(2) of when split sleeper berth time can be used by drivers operating commercial vehicles in intrastate commerce.

Adoption of the amendments to §4.15 adds new paragraph (4) to subsection (b) and is necessary in order to clarify the department's enforcement options if a motor carrier's operations pose an imminent hazard.

Adoption of the amendments to §4.21 reformats the section and are necessary in order to provide that valid positive test results, releases and submittal of reports may be made via electronic mail, when the identity of the requestor and the security of the communication have been properly verified.

On July 10, 2007, the department held a public hearing to receive comments from all interested persons regarding adoption of the amendments. Mr. Douglas Brodie, Vice President-Government Affairs, Compliance Safety Systems appeared at the public hearing; however, he was interested in discussing other issues not related to this adoption.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations by reference.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 27, 2007.

TRD-200703257
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: August 16, 2007
Proposal publication date: June 22, 2007
For further information, please call: (512) 424-2135

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Education Agency

Title 19, Part 2

The State Board of Education (SBOE) proposes the review of 19 TAC Chapter 97, Planning and Accountability, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the SBOE in 19 TAC Chapter 97 are organized under the following subchapter: Subchapter A, Accountability.

As required by the Texas Government Code, §2001.039, the SBOE will accept comments as to whether the reasons for adopting 19 TAC Chapter 97, Subchapter A, continue to exist.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028.

TRD-200703249
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: July 26, 2007

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The Texas Education Agency (TEA) proposes the review of rules in 19 TAC Chapter 97, Planning and Accountability, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the TEA in 19 TAC Chapter 97 are organized under the following subchapters: Subchapter AA, Accountability and Performance Monitoring; Subchapter BB, Memoranda of Understanding; Subchapter DD, Procedures for Investigative Reports and Sanctions; and Subchapter FF, Commissioner's Rules Concerning the Job Corps Diploma Program.

The rule in 19 TAC Chapter 97, Subchapter CC, Commissioner's Rules Concerning the Annual Evaluation of Disciplinary Alternative Education Programs (§97.1021, Annual Evaluation of Disciplinary Alternative Education Programs), is not subject to review under Government Code, §2001.039, since the TEA has adopted the repeal of this rule, published in this issue of the *Texas Register*. The repeal of §97.1021 was necessary in order to comply with legislative changes relating to limitation on compliance monitoring in accordance with House Bill 3459, 78th Texas Legislature, 2003.

Also, a rule in 19 TAC Chapter 97, Subchapter AA (§97.1002, Identification of Technical Assistance Team Campuses), is not subject to review under Government Code, §2001.039, since the TEA has adopted the repeal of this rule, published in the July 20, 2007, issue of the *Texas Register* (32 TexReg 4549). The repeal of §97.1002 was necessary since this provision is addressed in the *2007 Accountability Manual*, adopted as a figure in §97.1001.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 97, Subchapters AA, BB, DD, and FF, continue to exist.

The public comment period on the review of 19 TAC Chapter 97, Subchapters AA, BB, DD, and FF, begins August 10, 2007, and ends September 9, 2007. Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028.

TRD-200703248
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: July 26, 2007

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Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance, Division of Workers' Compensation files this notice of intention to review the rules contained in Chapter 103, concerning Agency Administration. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by Senate Bill 178, 76th Legislature.

The Division's reason for adopting the following rules contained in this chapter no longer exists and; therefore, the repeal of these rules is recommended.

Subchapter A. Employee Training and Education Program

§103.1. General Provisions.

§103.2. Employee Training and Education Program.

§103.3. No Effect on At-Will Status.

§103.100. Historically Underutilized Businesses.

Subchapter B. Agency Contracts

§103.101. Vendor Protest Procedures.

Subchapter C. Resolution of Contract Claims

§103.300. Purpose.

§103.301. Applicability.

§103.302. Definitions.

§103.303. Prerequisites to Suit.

§103.304. Sovereign Immunity.

§103.305. Notice of Claim of Breach of Contract.

§103.306. Agency Counterclaim.

§103.307. Duty to Negotiate.

§103.308. Timetable.

§103.309. Conduct of Negotiation.

§103.310. Settlement Approval Procedures.

§103.311. Settlement Agreement.

§103.312. Costs of Negotiation.

§103.313. Request for Contested Case Hearing.

§103.314. Mediation Timetable.

§103.315. Mediation of Contract Disputes.

§103.316. Qualifications and Immunity of the Mediator.

§103.317. Confidentiality of Mediation and Final Settlement Agreement.

§103.318. Costs of Mediation.

§103.319. Settlement Approval Procedures.

§103.320. Initial Settlement Agreement.

§103.321. Final Settlement Agreement.

§103.322. Referral to the State Office of Administrative Hearings.

Subchapter D. Facilities and Property Management

§103.400. Fleet Vehicle Management Program.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on September 10, 2007, and submitted to Victoria Ortega, Legal Services, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200703294
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: July 27, 2007

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Adopted Rule Review

State Board for Educator Certification

Title 19, Part 7

The State Board for Educator Certification (SBEC) adopts the review of 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases Including Enforcement of the Educator's Code of Ethics, Subchapter A, General Provisions; Subchapter B, Enforcement Actions and Guidelines; Subchapter C, Prehearing Matters; Subchapter D, Hearing Procedures; Subchapter E, Posthearing Matters; and Subchapter F, Enforcement of the Educator's Code of Ethics, pursuant to the Texas Government Code, §2001.039. The SBEC proposed the review of 19 TAC Chapter 249, in the February 2, 2007, issue of the *Texas Register* (32 TexReg 455).

Relating to the review of 19 TAC Chapter 249, Subchapters A-F, the SBEC finds that the reasons for adopting continue to exist and readopts the rules with changes to streamline processes to promote a more efficient resolution of contested cases. In addition, numerous grammatical and technical changes would be made, such as updating statutory citation references to reflect current law. The SBEC will propose amendments to §§249.3 - 249.7, 249.9 - 249.15, 249.17 - 249.33, and 249.35 - 249.44 and the repeal of 249.1, 249.45, and Subchapter F, which includes §§249.46 - 249.56, for publication in an August 2007 issue of the *Texas Register*. The SBEC will not propose amendments to §§249.8, 249.16, and 249.34 at this time.

The SBEC received no comments related to the rule review of 19 TAC Chapter 249, Subchapters A-F.

This concludes the review of 19 TAC Chapter 249.

TRD-200703345
Cristina De La Fuente-Valadez
Director, Policy Coordination
State Board for Educator Certification
Filed: August 1, 2007

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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §83.53(b)

Tier	Criteria	Total Inspection Frequency (includes both periodic and risk-based inspections)
(1) Tier 1	Beauty salons and specialty salons having: (A) a significant violation(s) of sanitation rules, particularly those determined by the department to pose a threat for the spread of infectious or contagious disease; or (B) significant or repeated violation(s) relating to unlicensed practice.	Once each year
(2) Tier 2	Beauty salons and specialty salons: (A) serious or repeated violation(s) of sanitation rules, particularly those determined by the department to pose a threat for the spread of infectious or contagious disease; or (B) serious or repeated violation(s) relating to unlicensed practice.	Twice each year
(3) Tier 3	(A) Beauty salons and specialty salons having: (i) repeated, serious violations of sanitation rules determined by the department to pose a threat for the spread of infectious or contagious disease; or (ii) repeated, serious violations related to unlicensed practice. (B) Beauty culture schools having: (i) a significant violation(s) of sanitation rules, particularly those determined by the department to pose a threat for the spread of infectious or contagious disease; (ii) significant or repeated violation(s) relating to unlicensed practice; (iii) violation(s) relating to the improper awarding of hours to students; or (iv) violation(s) relating to compromised security of department examinations.	Four times each year

Figure: 16 TAC §83.120(d)

Each cosmetology student must complete practical applications of the curriculum according to the school's published rules on minimum practical applications or by the following schedule, whichever is greater		
(A)	client protection	600 applications
(B)	hairdressing: arranging, cutting, dressing, shampooing, curling, pressing, and fingerwaving	600 applications
(C)	Sanitation	500 applications
(D)	haircoloring: temporary, semi-permanent, permanent, bleaching and dimensional, coloring, color mixing	100 applications
(E)	chemical hair services: minimum of 15 services in each category: (i) restructuring (ii) permanent waving (iii) straightening and relaxing	100 applications
(F)	facials: minimum of 5 services in each category: (i) skin analysis and care (ii) manipulation and massage (iii) skin care (iv) removal of hair by wax, tweezers, or depilatories (v) make-up and brow arch	30 applications
(G)	Scalp and hair treatments	30 applications
(H)	manicuring and pedicuring	30 applications
THE ABOVE PRACTICAL APPLICATIONS MAY BE PERFORMED ON A MANNEQUIN, A STUDENT OR A PATRON AND MOCK APPLICATIONS MAY BE USED WHERE APPROPRIATE AND NECESSARY. IT SHALL BE THE RESPONSIBILITY OF THE BEAUTY CULTURE SCHOOL TO KEEP A RECORD OF THE NUMBER OF PRACTICAL APPLICATIONS PERFORMED BY EACH STUDENT.		

Figure: 16 TAC §402.708(c)(3)

If	Then
Licensed Authorized Organization	Officer/director or bingo chairperson
Unit with Trustee Organization	Trustee organization officer/director or bingo chairperson and designated agent
Unit with Designated Agent	Designated agent and officer/director or bingo chairperson for each member organization
Unit with Unit Manager	Unit manager
Commercial Lessor	Officer, Director, or Owner

Figure: 16 TAC §402.708(g)

If	Required to attend	May attend
Licensed Authorized Organization	Officer, director or bingo chairperson and primary operator	Any officer or director, other persons designated by the licensee including legal counsel, bookkeeper, or accountant
Unit with Trustee Organization	Trustee organization officer, director or bingo chairperson, primary operator, and designated agent	Other member organizations' bingo chairperson, any officer or director, other persons designated by the licensee including legal counsel, bookkeeper, or accountant
Unit with Designated Agent	Designated agent, officer, director or bingo chairperson for member organizations, primary operators for member organizations.	Any officer or director for member organizations, other persons designated by the licensee including legal counsel, bookkeeper, or accountant
Unit with Unit Manager	Unit manager	Bingo chairperson, primary operator and any officer or director for member organizations, other persons designated by the licensee including legal counsel, bookkeeper, or accountant
Commercial Lessor	Officer, director, or owner	Other persons designated by the licensee including legal counsel, bookkeeper, or accountant

Figure: 16 TAC §402.715(u)

If:	Then:
Agree with the audit findings	Statement of agreement. Corrective actions to be taken to ensure the bingo operations are in compliance with the Act and Rules. Expected date of completion of corrective actions.
Disagree with the audit findings	Statement of disagreement. Supporting documentation that supports statement of disagreement, if applicable.

Figure: 30 TAC §101.306(b)(3)

Calculation of Emission Reductions Needed for System Cap or Source Cap

$$ECs = \left[\sum_{i=1}^{N}(H_n \times R_n) - \sum_{i=1}^{N}(H_i \times R_i)\right] \times \frac{365}{2000}$$

Where:

N = the total number of emission units in the source cap

i = each emission unit in the source cap

H_i = actual daily heat input, in million British thermal units (MMBtu) per day, as calculated according to §§117.123(b)(1) or (2), 117.223(b)(1) or (2), 117.320(c)(1) - (3), 117.323(b)(1) or (2), 117.423(b)(1) or (2), 117.1020(c)(1) or (2), 117.1120(c)(1) or (2), or 117.1220(c)(1) or (2) of this title

R_i = the facility's emission factor, in pounds (lb)/MMBtu, is defined as in §§117.123(b)(1) or (2), 117.223(b)(1) or (2), 117.320(c)(1) - (3), 117.323(b)(1) or (2), 117.423(b)(1) or (2), 117.1020(c)(1) or (2), 117.1120(c)(1) or (2), or 117.1220(c)(1) or (2) of this title

H_n = the maximum daily heat input, in MMBtu per day, expected for an emission unit during the use period

R_n = the maximum emission factor, in lb/MMBtu, expected for an emission unit during the use period

Figure: 30 TAC §101.353(a)

$$A = [B] - X\left[B - \left(\frac{LA_{HA} * EF_{FINAL}}{2000}\right)\right]$$

Where:

(1) A= number of allowances rounded to tenths of tons;

(2) B = the facility's baseline emission rate and is calculated as follows:

(A) For facilities in operation prior to January 1, 1997:

$$B = \frac{(LA_{97} * EF_{97}) + (LA_{98} * EF_{98}) + (LA_{99} * EF_{99})}{3(2000)}$$

Where:

LA_{97} = the facility's level of activity, as certified by the executive director for 1997;

LA_{98} = the facility's level of activity, as certified by the executive director for 1998;

LA_{99} = the facility's level of activity, as certified by the executive director for 1999;

EF_{97} = the facility's emission factor for 1997 or the emission specifications under §§117.310, 117.1210, and 117.2010 of this title (relating to Emission Specifications for Attainment Demonstration; and Emission Specifications) (ESAD) whichever is higher, in pounds per unit of activity, (not to exceed any applicable federal or state regulation, rule, or permit limit), as certified by the executive director;

EF_{98} = the facility's emission factor for 1998 or the emission specifications under ESAD, whichever is higher, in pounds per unit of activity, (not to exceed any applicable federal or state regulation, rule, or permit limit), as certified by the executive director;

EF_{99} = the facility's emission factor for 1999 or the emission specifications under ESAD, whichever is higher, in pounds per unit of activity, (not to exceed any applicable federal or state regulation, rule, or permit limit), as certified by the executive director.

(B) For existing facilities not in operation prior to January 1, 1997 and that have

been in operation less than five complete consecutive calendar years beginning after the end of the adjustment period and have not established two years of baseline data:

$$B = \frac{LA_{ALLOWABLE} * EF_{ALLOWABLE}}{2000}$$

Where: $LA_{Allowable}$ = The level of activity authorized by the executive director until such time two consecutive calendar years of actual level of activity data is available;

$EF_{Allowable}$ = The emission factor or the emission specifications under ESAD, whichever is higher, authorized by the executive director until such time two consecutive calendar years of actual emission data is available.

(C) For existing facilities not in operation prior to January 1, 1997, and that have established two consecutive calendar years of baseline data out of the first five years of operation following the end of the adjustment period:

$$B = \frac{(LA_{YEAR-1} * EF_{YEAR-1}) + (LA_{YEAR-2} * EF_{YEAR-2})}{2(2000)}$$

Where: LA_{Year-1} = the facility's level of activity, as certified by the executive director, for the first of any two consecutive years within the first five years of operation;

LA_{Year-2} = the facility's level of activity, as certified by the executive director, for the second of any two consecutive years within the first five years of operation;

EF_{Year-1} = the facility's emission factor or the emission specifications under ESAD, whichever is higher, in pounds per unit of activity, (not to exceed any applicable federal or state regulation, rule, or permit limit), as certified by the executive director, for the first of any two consecutive years within the first five years of operation;

EF_{Year-2} = the facility's emission factor or the emission specifications under ESAD, whichever is higher, in pounds per unit of activity, (not to exceed any applicable federal or state regulation, rule, or permit limit), as certified by the executive director, for the second of any two consecutive years within the first five years of operation.

(3) X = reduction factor, where:

(A) For all boilers, auxiliary steam boilers, and stationary gas turbines (including duct burners used in turbine exhaust ducts) within an electric power generating system, as defined in §117.10(14)(A) of this title (relating to Definitions), located in the Houston-Galveston-Brazoria nonattainment area:

(i) for January 1, 2002 through March 31, 2003, X = 0.00;

(ii) for April 1, 2003 through March 31, 2004, X = 0.50;

(iii) on or after April 1, 2004, X = 1.00;

(B) For facilities subject to the emission specifications under §117.310(a)(1)(A) and (B), (2)(A), (5), (8)(A)(i), (8)(B), (9)(A)(ii), (10), or (11) of this title:

(i) for January 1, 2002 through March 31, 2004, X = 0.00;

(ii) for April 1, 2004 through March 31, 2005, X = 0.47;

(iii) for April 1, 2005 through March 31, 2006, X = 0.80;

(iv) for April 1, 2006 through March 31, 2007, X = 0.93;

(v) on and after April 1, 2007, X = 1.00;

(C) For all other facilities:

(i) for January 1, 2002 through March 31, 2004, X = 0.00;

(ii) for April 1, 2004 through March 31, 2005, X = 0.389;

(iii) for April 1, 2005 through March 31, 2006, X = 0.667;

(iv) for April 1, 2006 through March 31, 2007, X = 0.778;

(v) on and after April 1, 2007, X = 1.00;

(D) Alternatively, facilities subject to the reduction factors under subparagraph B of this paragraph may elect to comply with the following:

(i) for January 1, 2002 through March 31, 2005, X=0.00;

(ii) on and after April 1, 2005, X=1.00.

(E) Election to comply with the alternative reduction schedule under subparagraph (D) of this paragraph shall be made by letter to the executive director no later than April 1, 2003.

(F) For calendar years which include two different reduction factors, the reduction factor shall be adjusted using the appropriate ratio to reflect the

number of months covered by each reduction factor.

(4) LA_{HA} = historical average level of activity, where:

(A) For facilities in operation on or before January 1, 1997, the average level of activity, as certified by the executive director, for 1997, 1998, and 1999; or

(B) For existing facilities which began operation after January 1, 1997, LA_{HA} is:

(i) the level of activity authorized by the executive director until such time two consecutive calendar years of actual level of activity data is available, beginning after the end of the adjustment period; or

(ii) when two complete consecutive calendar years of actual level of activity data is available, beginning after the end of the adjustment period, the level of activity becomes the average of the facility's actual level of activity over those two consecutive calendar years of actual level of activity data.

(5) EF_{final} = emission factor, as listed in §§117.310, 117.1210, or 117.2010 of this title.

(6) For facilities using alternative emission specifications as allowed in §117.310(a)(17) or §117.2010(c)(6) of this title, the level of activity for any formula will be the lowest of the level of activity as calculated in variables (2)(A), (2)(B), or the level of activity limited by an enforceable limit or commitment necessary to qualify for an alternative emission specification in §117.310(a)(17) or §117.2010(c)(6) of this title.

Figure: 30 TAC §101.376(d)(2)(A)(i)

$$\text{Amount of DERCs Required (tons)} = \sum_{i=1}^{N}\left[\left(EH_i \times ER_i\right) - \left(H_i \times R_i\right)\right] \times \left(\frac{d}{2000}\right)$$

Where:

d = the number of days in the use period

i = each emission unit in the source or system cap

N = the total number of emission units in the source or system cap

H_i = actual daily heat input, in million British thermal units (MMBtu) per day, as calculated according to §§117.123(b)(1), 117.223(b)(1), 117.320(c)(1) and (2), 117.323(b)(1), 117.423(b)(1), 117.1020(c)(1), 117.1120(c)(1), 117.1220(c)(1), or 117.3020(c) of this title (relating to Source Cap; and System Cap) as applicable

R_i = actual emission rate, in pounds (lb)/MMBtu, as defined in §§117.123(b)(1), 117.223(b)(1), 117.320(c)(1) and (2), 117.323(b)(1), 117.423(b)(1), 117.1020(c)(1), 117.1120(c)(1), 117.1220(c)(1), or 117.3020(c) of this title as applicable

EH_i = expected new daily heat input, in MMBtu per day

ER_i = expected new emission rate, in lb/MMBtu.

Figure: 30 TAC §101.376(d)(2)(A)(ii)

$$\text{Amount of DERCS Required (tons)} = \sum_{i=1}^{N}\left[\left(EH_{Mi}xER_i\right)-\left(H_{Mi}xR_i\right)\right]\frac{1}{2000}$$

Where:

i = each emission unit in the source or system cap

N = the total number of emission units in the source or system cap

R_i = in lb/MMBtu, is defined as in §§117.123(b)(2), 117.223(b)(2), 117.320(c)(3), 117.323(b)(2), 117.423(b) (2), 117.1020(c)(2), 117.1120(c)(2), or 117.1220(c)(2) of this title (relating to Source Cap; and System Cap) as applicable

H_{Mi} = the maximum daily heat input, in MMBtu/day, as defined in §§117.123(b)(2), 117.223(b)(2), 117.320(c)(3), 117.323(b)(2), 117.423(b)(2), 117.1020(c)(2), 117.1120(c)(2), or 117.1220(c)(2) of this title as applicable

EH_{Mi} = expected new maximum daily heat input, in MMBtu per day

ERi = expected new emission rate, in lb/MMBtu.

Figure 1: 30 TAC Chapter 290--Preamble

Estimated Agency Costs to Implement Stage 2 Drinking Water Rules

	2007	2008	2009	2010	2011	Total Costs
GWR	$317,778	$317,778	$389,644	$862,400	$862,400	$2,750,000
LT2	154,489	161,822	161,822	161,822	161,822	801,777
DBP2	964,283	920,446	1,464,703	92,828	74,570	3,516,830
Total Costs	$1,436,550	$1,400,046	$2,016,169	$1,117,050	$1,098,792	$7,068,607

Figure 2: 30 TAC Chapter 290--Preamble

Estimated Costs to Other State Agencies to Implement Stage 2 Drinking Water Rules

	2007	2008	2009	2010	2011	Total Costs
GWR	$0	$0	$19,638	$290,458	$183,788	$493,884
LT2	420	420	17,608	17,608	44,058	80,114
DBP2	35,695	38,158	58,398	5,819	1,187	139,257
Total Costs	$36,115	$38,578	$95,644	$313,885	$229,033	$713,255

Figure 3: 30 TAC Chapter 290--Preamble

Statewide Estimated Costs to Local Governments (LGs) for Stage 2 Drinking Water Rules

Rule Type	Number of LGs Affected	2007	2008	2009	2010	2012	Estimated Total
GW	1,970	$0	$0	$336,411	$4,975,663	$3,148,375	$8,460,449
LT2	314	729,596	729,596	14,800,473	14,519,713	15,447,182	46,226,560
DBP2	2,775	4,114,710	4,124,861	6,546,324	376,614	57,540	15,220,049
Estimated Total		$4,844,306	$4,854,457	$ 21,683,208	$19,871,990	$18,653,097	$69,907,058

The GW rule will begin implementation during the third year the proposed rules are in effect. Greater fiscal impact is expected to occur in the fourth and fifth years as systems with significant deficiencies begin corrective action, and in some cases, 4-log treatment of viruses.

LT2 costs in the first and second year the proposed rules are in effect are associated with large PWSs beginning surface water source sampling. LT2 costs in the third through fifth years the proposed rules are in effect are projected to include costs from smaller systems for initial and extra sampling costs and possible treatment installation costs as needed based on sampling results. The compliance date for the largest PWSs is in 2012 and costs for these systems are expected to continue until that time and thereafter.

DBP2 costs shown above are associated with required Initial Distribution System Evaluation (IDSE) activities during the first five years the proposed rules are implemented.

Figure 4: 30 TAC Chapter 290--Preamble

Statewide Estimated Costs to Small and Micro-Businesses for Stage 2 Drinking Water Rules

Rule Type	Number of Entities Affected	2007	2008	2009	2010	2011	Estimated Total
GWR	3,299	$0	$0	$563,361	$8,332,342	$5,272,330	$14,168,033
LT2	36	1,513	1,513	63,388	63,388	158,609	288,411
DBP2	2,537	313,571	254,462	482,926	93,663	102,179	1,246,801
Estimated Total Costs		$315,084	$255,975	$1,109,675	$8,489,393	$5,533,118	$15,703,245

The GWR will begin implementation during the third year the proposed rules are in effect. Greater fiscal impact is expected to occur in the fourth and fifth years as systems with significant deficiencies begin corrective action, and in some cases, 4-log treatment of viruses.

LT2 costs in the first and second year the proposed rules are in effect are associated with training and preparatory costs. Businesses operating PWSs tend to be smaller and are on a delayed compliance schedule. LT2 costs in the third through fifth years the proposed rules are in effect are projected to include costs for initial and extra sampling costs and possible treatment installation costs as needed based on sampling results. The compliance date for small PWSs is in 2014 and costs for these systems are expected to continue until that time and thereafter.

DBP2 costs shown above are associated with required Initial Distribution System Evaluation (IDSE) activities during the first five years the proposed rules are implemented.

Figure 5: 30 TAC Chapter 290--Preamble

Estimated Costs per Employee to a Small Business for Stage 2 Drinking Water Rules

Rule Type	Number Small Business	2007	2008	2009	2010	2011
GWR	17	$0	$0	$1.71	$25.26	$15.98
LT2	1	0.42	0.42	17.61	17.61	44.06
DBP2	23	1.24	1.00	1.90	0.37	0.40
Estimated Total Costs per Employee		$1.66	$1.42	$21.22	$43.23	$60.44

Figure 6: 30 TAC Chapter 290--Preamble

Estimated Costs per Employee to a Micro-Business for Stage 2 Drinking Water Rules

Rule Type	Number Micro-Business	2007	2008	2009	2010	2011
GWR	3,282	$0	$0	$8.54	$126.29	$79.91
LT2	35	2.10	2.10	88.04	88.04	220.29
DBP2	2,514	6.18	5.02	9.52	1.85	2.01
Estimated Total Costs per Employee		$8.28	$7.12	$106.09	$216.17	$302.21

Figure: 30 TAC §290.45(d)(1)

Table A

Type of Establishment	Gallons/Person/Day
Restaurants	18
Schools without cafeterias, gymnasiums, or showers	18
Schools with cafeterias, but no gymnasiums or showers	24
Schools with cafeterias, gymnasiums, and showers	30
Youth camps without flush toilets, showers, or dining halls	6
Youth camps with flush toilets, but no showers or dining halls	24
Youth camps with flush toilets, showers, and dining halls	42
Office buildings	18
Hospitals (based on number of beds)	720
Institutions, other than hospitals	240
Factories (exclusive of industrial processes)	24
Parks	6
Swimming pools	12
Country clubs	120
Airports (per passenger)	6
Self-service laundries	60
Service stations/stores	12

It should be noted that this table is used to determine minimum capacities only and that the overriding criteria will be the ability of the system to maintain a minimum pressure of 35 psi under normal operating conditions. Minimum distribution pressure shall not be less than 20 psi at any time.

Figure: 30 TAC §290.47(c)

SANITARY CONTROL EASEMENT

DATE: _____, 2____ [~~19__~~]

GRANTOR(S):
GRANTOR'S ADDRESS:
GRANTEE:
GRANTEE'S ADDRESS:
SANITARY CONTROL EASEMENT:

Purpose, Restrictions, and Uses of Easement:

1. The purpose of this easement is to protect the water supply of the well described and located below by means of sanitary control.

2. The construction and operation of underground petroleum and chemical storage tanks and liquid transmission pipelines, stock pens, feedlots, dump grounds, privies, cesspools, septic tank or sewage treatment drainfields, improperly constructed water wells of any depth, and all other construction or operation that could create an unsanitary [insanitary] condition within, upon, or across the property subject to this easement are prohibited within this easement. For the purpose of the easement, improperly constructed water wells are those wells which do not meet the surface and subsurface construction standards for a public water supply well.

3. The construction of tile or concrete sanitary sewers, sewer appurtenances, septic tanks, storm sewers, and cemeteries is specifically prohibited within a 50-foot radius of the water well described and located below.

4. This easement permits the construction of homes or buildings upon the Grantor's property as long as all items in Restrictions Nos. 2 and 3 are recognized and followed.

5. This easement permits normal farming and ranching operations, except that livestock shall not be allowed within 50 feet of the water well.

The Grantor's property subject to this Easement is described in the documents recorded at:
Volume ___, Pages ___ of the Real Property Records of _____ County, Texas.
Property Subject to Easement:

All of that area within a 150 foot radius of the water well located ___ feet at a radial of ___ degrees from the ___ corner of Lot ___, of a Subdivision of Record in Book ___, Page ___ of the County Plat Records, _____ County, Texas.

TERM:

This easement shall run with the land and shall be binding on all parties and persons claiming under the Grantor(s) for a period of two years from the date that this easement is recorded; after which time, this easement shall be automatically extended until the use of the subject water well as a source of water for public water systems ceases.

ENFORCEMENT:

Enforcement of this easement shall be proceedings at law or in equity against any person or persons violating or attempting to violate the restrictions in this easement, either to restrain the violation or to recover damages.

INVALIDATION:

Invalidation of any one of these restrictions or uses (covenants) by a judgement or court order shall not affect any of the other provisions of this easement, which shall remain in full force and effect.

FOR AND IN CONSIDERATION, of the sum of One Dollar ($1.00) and for other good and valuable consideration paid by the Grantee to the Grantor(s), the receipt of which is hereby acknowledged, the Grantor does hereby grant and convey to Grantee and to its successors and assigns the sanitary control easement described in this easement.

GRANTOR(S)

By:

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF §

BEFORE ME, the undersigned authority, on the day of _____, 2____ [~~19~~__], personally appeared _____ known to me to be the person(s) whose name(s) is(are) subscribed to the foregoing instrument and acknowledged to me that executed the same for the purposes and consideration therein expressed.

Notary Public in and for
THE STATE OF TEXAS
My Commission Expires:

Typed or Printed Name of Notary

Recorded in _____ Courthouse, _____ Texas on _____, 2____ [~~19~~__]

Figure: 30 TAC §290.47(d)

Appendix D: Customer Service Inspection Certificate

Customer Service Inspection Certificate

Name of PWS _____ PWS I.D.# _____
Location of Service _____

Reason for Inspection: New construction ☐
Existing service where contaminant hazards are suspected ☐
Major renovation or expansion of distribution facilities ☐

I _____, upon inspection of the private water distribution facilities connected to the aforementioned public water supply do hereby certify that, to the best of my knowledge:

	Compliance	Non-Compliance
(1) No direct connection between the public drinking water supply and a potential source of contamination exists. Potential sources of contamination are isolated from the public water system by an air gap or an appropriate backflow prevention assembly in accordance with Commission regulations.	☐	☐
(2) No cross-connection between the public drinking water supply and a private water system exists. Where an actual air gap is not maintained between the public water supply and a private water supply, an approved reduced pressure-zone backflow prevention assembly is properly installed and a service agreement exists for annual inspection and testing by a certified backflow prevention assembly tester.	☐	☐
(3) No connection exists which would allow the return of water used for condensing, cooling or industrial processes back to the public water supply.	☐	☐
(4) No pipe or pipe fitting which contains more than 8.0% lead exists in private water distribution facilities installed on or after July 1, 1988.	☐	☐
(5) No solder or flux which contains more than 0.2% lead exists in private water distribution facilities installed on or after July 1, 1988.	☐	☐

I further certify that the following materials were used in the installation of the private water distribution facilities:

Service lines Lead ☐ ____ Copper ☐ PVC ☐ Other ☐

Solder Lead ☐ ____ Lead Free ☐ Solvent Weld ☐ Other ☐

I recognize that this document shall become a permanent record of the aforementioned Public Water System and that I am legally responsible for the validity of the information I have provided.

Remarks:

_____ _____

Signature of Inspector **Registration Number**

_____ _____

Title **Type of Registration**

_____

Date

Figure: 30 TAC §290.47(e)

BOIL WATER NOTIFICATION

Due to conditions which have occurred recently in the water system, the Texas Commission on Environmental Quality has required the system to notify all customers to boil their water prior to consumption.

To ensure destruction of all harmful bacteria and other microbes, water for drinking, cooking, and ice making should be boiled and cooled prior to consumption. The water should be brought to a vigorous rolling boil and then boiled for two minutes. In lieu of boiling, you may purchase bottled water or obtain water from some other suitable source. When it is no longer necessary to boil the water, water system officials will notify you.

If you have questions regarding this matter you may contact (a) _____ at (b) _____.

(a) Utility Official(s) (b) Phone Number(s)

INSTRUCTIONS:

List more than one utility official and phone number. Do not list the commission as the primary contact. If a customer wishes to call the commission, please have them call (512) 239-4691 [~~(512) 239-6020~~].

Figure: 30 TAC §290.47(f)

The following form must be completed for each assembly tested. A signed and dated original must be submitted to the public water supplier for recordkeeping purposes:

BACKFLOW PREVENTION ASSEMBLY TEST AND MAINTENANCE REPORT

NAME OF PWS: _____
PWS I.D.: #_____
MAILING ADDRESS: _____
CONTACT PERSON: _____
LOCATION OF SERVICE: _____

The backflow prevention assembly detailed below has been tested and maintained as required by commission regulations and is certified to be operating within acceptable parameters.

TYPE OF ASSEMBLY

☐ Reduced Pressure Principle
☐ Double Check Valve
☐ Pressure Vacuum Breaker
☐ Reduced Pressure Principle-Detector
☐ Double Check-Detector
☐ Spill-Resistant Pressure Vacuum Breaker

Manufacturer_____ Size _____
Model Number_____ Located At _____
Serial Number_____

Is the assembly installed in accordance with manufacturer recommendations and/or local codes?_____

	Reduced Pressure Principle Assembly			Pressure Vacuum Breaker	
	Double Check Valve Assembly			Air Inlet	Check Valve
	1st Check	2nd Check	Relief Valve		
Initial Test	Held at ____ psid Closed Tight ☐ Leaked ☐	Held at ____ psid Closed Tight ☐ Leaked ☐	Opened at ___ psid Did not open ☐	Opened at ____ psid Did not open ☐	Held at _____ psid Leaked ☐
Repairs and Materials Used					
Test After Repair	Held at ____ psid Closed Tight ☐	Held at ____ psid Closed Tight ☐	Opened at ___ psid	Opened at ____ psid	Held at _____ psid

Test gauge used: Make/Model_____ SN:_____ Date Tested for Accuracy [~~Calibration Date~~]:_____
Remarks:_____
The above is certified to be true at the time of testing.
Firm Name _____ Certified Tester (print)_____

Firm Address _____ Certified Tester (signature)_____
Firm Phone #_____ Cert. Tester No. _____ Date_____

* TEST RECORDS MUST BE KEPT FOR AT LEAST THREE YEARS
** USE ONLY MANUFACTURER'S REPLACEMENT PARTS

Figure: 30 TAC §290.47(h)

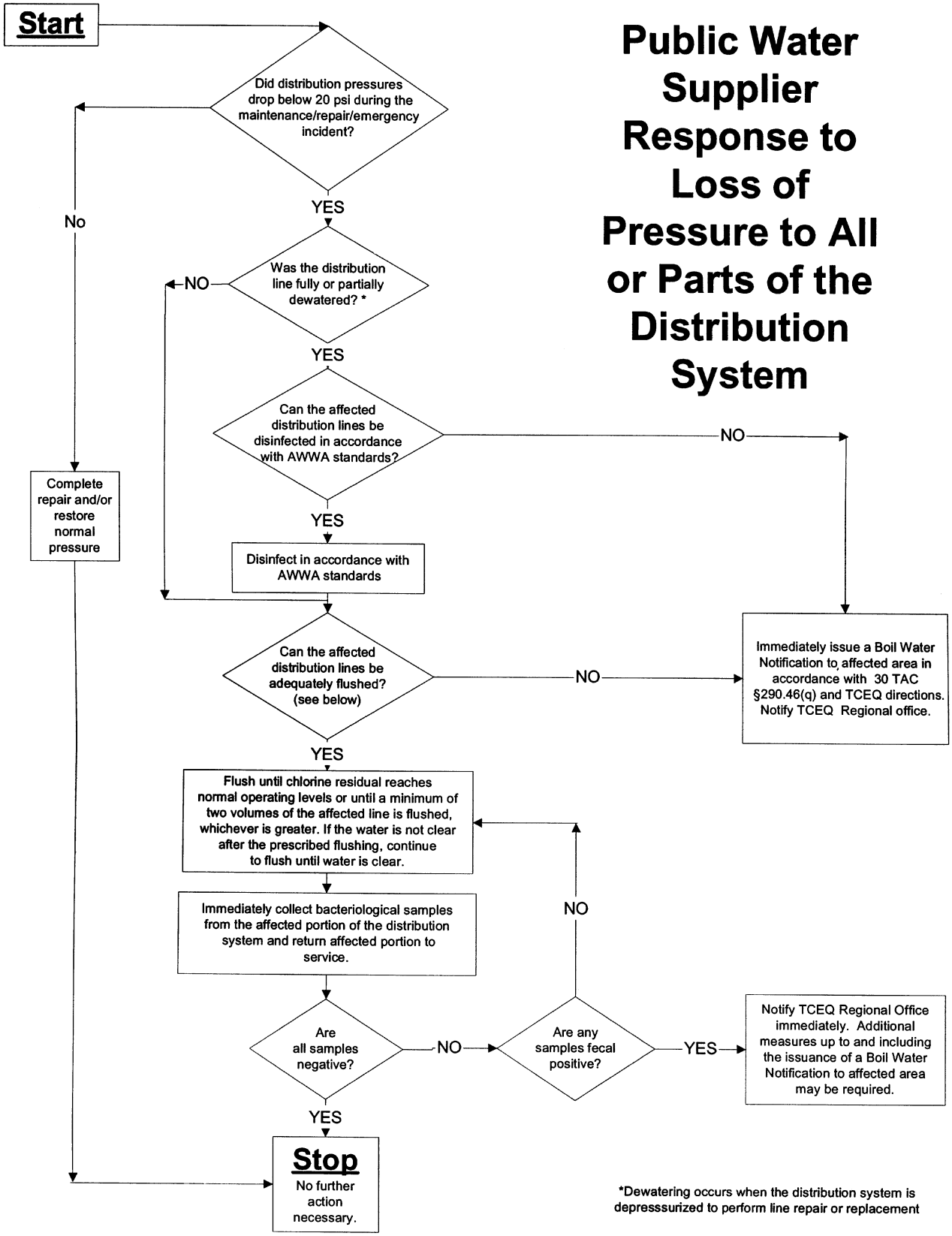

Figure: 30 TAC §290.104(b)

Contaminant	**MCL (mg/L)**
Antimony	0.006
[~~Arsenic~~]	[~~0.05 (Until January 23, 2006)~~]
Arsenic	0.010 [~~(After January 23,2006)~~]
Asbestos	7 million fibers/liter (longer than 10 μm)
Barium	2
Beryllium	0.004
Cadmium	0.005
Chromium	0.1
Cyanide	0.2 (as free Cyanide)
Fluoride	4.0
Mercury	0.002
Nitrate	10 (as Nitrogen)
Nitrite	1 (as Nitrogen)
Nitrate & Nitrite (Total)	10 (as Nitrogen)
Selenium	0.05
Thallium	0.002

Figure: 30 TAC §290.106(b)

Contaminant	**MCL (mg/L)**
Antimony	0.006
[~~Arsenic~~]	[~~0.05 (until January 23, 2006)~~]
Arsenic	0.010 [~~(starting January 23, 2006)~~]
Asbestos	7 million fibers/liter (longer than 10μm)
Barium	2
Beryllium	0.004
Cadmium	0.005
Chromium	0.1
Cyanide	0.2 (as free Cyanide)
Fluoride	4.0
Mercury	0.002
Nitrate	10 (as Nitrogen)
Nitrite	1 (as Nitrogen)
Nitrate & Nitrite (Total)	10 (as Nitrogen)
Selenium	0.05
Thallium	0.002

Figure: 30 TAC §290.110(c)(1)(B)(i)

Entry Point Disinfectant Residual Monitoring Frequency for Grab Samples

System Size by Population	**Samples/day**
500	1
501 to 1,000	2
1,001 to 2,500	3
2,501 to 3,300	4

Figure: 30 TAC §290.111(c)(3)(B)

Treatment Technique Requirements for *Cryptosporidium*

Average *Cryptosporidium* Level in the Raw Water	Bin Classification	Minimum Treatment Technique Requirement
Cryptosporidium <0.075 oocyst/L	Bin 1	22.0-log
0.075 oocysts/L ≤*Cryptosporidium* <1.0 oocysts/L	Bin 2	44.0-log
1.0 oocysts/L ≤*Cryptosporidium* <3.0 oocysts/L	Bin 3	55.0-log
Cryptosporidium ≥3.0 oocysts/L	Bin 4	55.5-log

Figure: 30 TAC §290.111(d)(1)

Microbial Inactivation Requirements

	Filter Technology Used			
	Conventional Filters [1]		Membrane Filters and Cartridge Filters [2]	
Pretreatment Provided	*Giardia*	Virus	*Giardia*	Virus
No coagulation	NA	NA	0.0-log[3]	4.0-log
Coagulation and flocculation	1.0-log	3.0-log	0.0-log	3.0-log
Coagulation, flocculation, and clarification	0.5-log	2.0-log	0.0-log	2.0-log

1 Filters in which water passes through a porous granular media and which utilize depth filtration processes.

2 Filters in which particulate matter larger than 1 micrometer is rejected by an engineered barrier, primarily through a size-exclusion mechanism.

3 The executive director will determine the required *Giardia* inactivation on a case-by-case basis.

Figure: 30 TAC §290.113(a)(2)

Date to Start Stage 2 Compliance

This type of system:	**Must comply with Stage 2 starting:**
Systems that are not part of a combined distribution system and systems that serve the largest population in the combined distribution system	
System serving 100,000 or more population	April 1, 2012
System serving 50,000 to 99,999 population	October 1, 2012
System serving 10,000 to 49,999 population	October 1, 2013
System serving fewer than 10,000 population if the system distributes only treated groundwater or potable water purchased from another system	October 1, 2013
System serving fewer than 10,000 population that treats surface water (or groundwater under the direct influence of surface water) if no *Cryptosporidium* monitoring is required under §290.111(b)(3)(B)	October 1, 2013
System serving fewer than 10,000 population that treats surface water (or groundwater under the direct influence of surface water) if *Cryptosporidium* monitoring is required under §290.111(b)(3)(B)	October 1, 2014
Systems that are part of a combined distribution system	
Consecutive system or wholesale system that is part of a combined distribution system	At the same time as the system with the earliest compliance date in the combined distribution system

Figure: 30 TAC §290.113(c)(3)

STAGE 1
ROUTINE MONITORING FREQUENCY AND LOCATIONS FOR TTHM AND HAA5

Type of system	Minimum Monitoring Frequency	Sample Location in the distribution system
Surface water or groundwater under the direct influence of surface water system serving at least 10,000 persons	four water samples per quarter per treatment plant	At least 25 % of all samples collected each quarter at locations representing maximum residence time. Remaining samples taken at locations representative of at least average residence time in the distribution system and representing the entire distribution system, taking into account number of persons served, different sources of water, and different treatment methods[1].
Surface water or groundwater under the direct influence of surface water system serving from 500 to 9,999 persons	one water sample per quarter per treatment plant	Locations representing maximum residence time[1].
Surface water or groundwater under the direct influence of surface water system serving fewer than 500 persons	one sample per year per treatment plant during month of warmest water temperature	Locations representing maximum residence time[1]. If the sample (or average of annual samples, if more than one sample is taken) exceeds MCL, system must increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until system meets reduced monitoring criteria in subsection (c) of this section.
System using only groundwater [~~ground water~~] not under direct influence of surface water using chemical disinfectant and serving at least 10,000 persons	one water sample per quarter per treatment plant[2]	Locations representing maximum residence time[1].
System using only groundwater [~~ground water~~] not under direct influence of surface water using chemical disinfectant and serving fewer than 10,000 persons	one sample per year per treatment plant[2] during month of warmest water temperature	Locations representing maximum residence time[1]. If the sample (or average of annual samples, if more than one sample is taken) exceeds MCL, system must increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until system meets criteria in subsection (c) of this section for reduced monitoring.

1 If a system elects to sample more frequently than the minimum required, at least 25% of all samples collected each quarter (including those taken in excess of the required frequency) must be taken at locations that represent the maximum residence time of the water in the distribution system. The remaining samples must be taken at locations representative of at least average residence time in the distribution system.

2 With approval of the executive director, multiple wells drawing water from a single aquifer may be considered one treatment plant for determining the minimum number of samples required.

Figure: 30 TAC §290.113(c)(4)

STAGE 1
REDUCED MONITORING FREQUENCY AND LOCATIONS FOR TTHM AND HAA5

IF YOU ARE A...	YOU MAY REDUCE MONITORING IF YOU HAVE MONITORED AT LEAST ONE YEAR AND YOUR...	TO THIS LEVEL
Surface water or groundwater under the direct influence of surface water system serving at least 10,000 persons which has a source water annual average TOC level, before any treatment, less than or equal to 4.0 mg/L	TTHM annual average less than or equal to 0.040 mg/L and HAA5 annual average less than or equal to 0.030mg/L	one sample per treatment plant per quarter at distribution system location reflecting maximum residence time
Surface water or groundwater under the direct influence of surface water system serving from 500 to 9,999 people which has a source water annual average TOC level, before any treatment, less than or equal to 4.0 mg/L	TTHM annual average less than or equal to 0.040 mg/L and HAA5 annual average less than or equal to 0.030mg/L	one sample per treatment plant per year at distribution system location reflecting maximum residence time during month of warmest water temperature.
Surface water or groundwater under the direct influence of surface water system serving fewer than 500 people		any surface water or groundwater under the direct influence of surface water system serving fewer than 500 persons may not reduce its monitoring to less than one sample per treatment plant per year.
System using only groundwater not under direct influence of surface water using chemical disinfectant and serving at least 10,000 persons	TTHM annual average less than or equal to 0.040 mg/L and HAA5 annual average less than or equal to 0.030mg/L	one sample per treatment plant per year at distribution system location reflecting maximum residence time during month of warmest water temperature
System using only groundwater not under direct influence of surface water using chemical disinfectant and serving fewer than 10,000 persons	TTHM annual average less than or equal to 0.040 mg/L and HAA5 annual average less than or equal to 0.030mg/L for two consecutive years OR TTHM annual average less than or equal to 0.020 mg/L and HAA5 annual average less than or equal to 0.015mg/L for one year	one sample per treatment plant per three year monitoring cycle at distribution system location reflecting maximum residence time during month of warmest water temperature, with the three-year cycle beginning on January 1 following quarter in which system qualifies for reduced monitoring.

Figure: 30 TAC §290.115(a)(2)

Date to Start Stage 2 Compliance

This type of system:	**Must comply with Stage 2 starting:**
Systems that are not part of a combined distribution system and systems that serve the largest population in the combined distribution system	
System serving 100,000 or more population	April 1, 2012
System serving 50,000 to 99,999 population	October 1, 2012
System serving 10,000 to 49,999 population	October 1, 2013
System serving fewer than 10,000 population if the system distributes only treated groundwater or potable water purchased from another system	October 1, 2013
System serving fewer than 10,000 population that treats surface water (or groundwater under the direct influence of surface water) if no *Cryptosporidium* monitoring is required under §290.111(b)(3)(B) of this title (relating to Surface Water Treatment)	October 1, 2013
System serving fewer than 10,000 population that treats surface water (or groundwater under the direct influence of surface water) if *Cryptosporidium* monitoring is required under §290.111(b)(3)(B) of this title	October 1, 2014
Systems that are part of a combined distribution system	
Consecutive system or wholesale system that is part of a combined distribution system	At the same time as the system with the earliest compliance date in the combined distribution system

Figure: 30 TAC §290.115(c)(1)

Date to Establish Stage 2 Sites

This type of system:	**Must establish Stage 2 sites by:**
Systems that are not in a combined distribution system:	
System serving 100,000 or more people	January 1, 2009
System serving 50,000 to 99,999 people	July 1, 2009
System serving 10,000 to 49,999 people	January 1, 2010
System serving fewer than 10,000 people	July 1, 2010
Systems in a combined distribution system	
Consecutive or wholesale system of any population	At the same time as the largest system in the combined distribution system

Figure: 30 TAC §290.115(c)(2)

Routine Stage 2 Monitoring Frequency and Number of Sites

Water Type	Retail Population	Routine Frequency[1]	Routine Number of Sites[5]
Surface Water (or Groundwater Under the Direct Influence of Surface Water)[2]	fewer than 500	Annual	1[3]
	500 to 3,300	quarterly	1[3]
	3,301 to 9,999	quarterly[4]	2
	10,000 to 49,999	quarterly[4]	4
	50,000 to 249,999	quarterly[4]	8
	250,000 to 999,999	quarterly[4]	12
	1,000,000 to 4,999,999	quarterly[4]	16
	5,000,000 or more	quarterly[4]	20
Groundwater	fewer than 500	Annual	1[3]
	500 to 9,999	Annual	1[3]
	10,000 to 99,999	quarterly[4]	4
	100,000 to 499,999	quarterly[4]	6
	500,000 or more	quarterly[4]	8

1 All systems must monitor during month of highest disinfection by-product concentrations.
2 A system that uses any treated surface water or groundwater under the direct influence of surface water shall be considered a surface water system for purposes of this section.
3 Systems on annual monitoring and surface water systems serving 500 to 3,300 people will use a single site if the highest TTHM and HAA5 concentrations occur at the same time and place. These systems may be required to take individual TTHM and HAA5 samples (instead of a dual sample set) at sites identified as the highest TTHM and HAA5 sites, respectively.
4 Systems on quarterly monitoring must take dual sample sets every 90 days at each monitoring location, except for surface water systems serving 500 to 3,300 people.
5 Monitoring locations must be approved by the executive director.

Figure: 30 TAC §290.115(c)(3)

Reduced Stage 2 Monitoring Frequency and Number of Sites

Source Water Type	Population Size Category	Monitoring Frequency [1]	Distribution System Monitoring Location Total per Monitoring Period
Surface or GUI	less than 500	Annual	Monitoring may not be reduced.
	500 to 3,300	Annual	1 dual sample set per year if the highest TTHM and HAA5 measurements occurred at the same location and quarter. [2]
	3,301 to 9,999	Annual	2 dual sample sets: one at the location and during the quarter with the highest TTHM single measurement, one at the location and during the quarter with the highest HAA5 single measurement.
	10,000 to 49,999	quarterly	2 dual sample sets at the locations with the highest TTHM and highest HAA5 LRAAs
	50,000 to 249,999	quarterly	4 dual sample sets at the locations with the two highest TTHM and two highest HAA5 LRAAs
	250,000 to 999,999	quarterly	6 dual sample sets at the locations with the three highest TTHM and three highest HAA5 LRAAs
	1,000,000 to 4,999,999	quarterly	8 dual sample sets at the locations with the four highest TTHM and four highest HAA5 LRAAs
	5,000,000 or more	quarterly	10 dual sample sets at the locations with the five highest TTHM and five highest HAA5 LRAAs
Ground-water	less than 500	every third year (triennial)	1 dual sample set per year if the highest TTHM and HAA5 measurements occurred at the same location and quarter. [2]
	500 to 9,999	Annual	1 dual sample set per year if the highest TTHM and HAA5 measurements occurred at the same location and quarter. [2]
	10,000 to 99,999	Annual	2 dual sample sets: one at the location and during the quarter with the highest TTHM single measurement, one at the location and during the quarter with the highest HAA5 single measurement
	100,000 to 499,999	quarterly	2 dual sample sets at the locations with the highest TTHM and highest HAA5 LRAAs
	500,000 or more	quarterly	4 dual sample sets at the locations with the two highest TTHM and two highest HAA5 LRAAs

1 Systems on quarterly monitoring must take dual sample sets every 90 days.

2 Systems on annual monitoring and surface water systems serving 500 to 3,300 people will use a single site if the highest TTHM and HAA5 concentrations occur at the same time and place. Any such system may be required to take individual TTHM and HAA5 samples (instead of a dual sample set) at sites identified as the highest TTHM and HAA5 sites, respectively.

Figure: 30 TAC §290.115(c)(5)(B)

Timing of Stage 1 Samples Evaluated for 40/30 IDSE Waiver

This type of system:	**40/30 certification is based on eight consecutive calendar quarters of Stage 1 compliance monitoring results beginning no earlier than**[1]
Systems that are not in a combined distribution system:	
System serving 100,000 or more people	January 2004
System serving 50,000 to 99,999 people	
System serving 10,000 to 49,999 people	January 2005
System serving fewer than 10,000 people	
Systems in a combined distribution system	
Consecutive or wholesale system of any population	at the same time as the largest system in the combined distribution system

1 A system that did not monitor during the specified period must base eligibility on compliance samples taken during the 12 months preceeding the specified period.

Figure: 30 TAC §290.115(c)(5)(C)

IDSE Schedule

Retail population	**Submit IDSE plan or waiver documentation by**[1, 2]**:**	**Complete IDSE by:**	**Submit IDSE report by:**[3]
Systems that are not part of a combined distribution system and systems that serve the largest population in the combined distribution system			
100,000 or more	October 1, 2006	September 30, 2008	January 1, 2009
50,000 through 99,999	April 1, 2007	March 31, 2009	July 1, 2009
10,000 through 49,999	October 1, 2007	September 30, 2009	January 1, 2010
less than 10,000 (Community Only)	April 1, 2008	March 31, 2010	July 1, 2010
Other systems that are part of a combined distribution system:			
Any population	At the same time as the system with the earliest compliance date in the combined distribution system		

1 If, within 12 months after the date identified in this column, the executive director does not approve a system's IDSE plan or notify the system that review is incomplete, the IDSE plan will be considered approved. The system must implement that plan and must complete standard IDSE monitoring or a system specific study no later than the date identified in the third column.

2 Waiver documentation must be submitted by the date indicated.

3 If the executive director does not approve an IDSE report or notify a system that review is incomplete within three months after the IDSE report is due to be submitted, or within nine months of the date that waiver documentation must be submitted for systems receiving waivers, the submitted report or waiver documentation will be considered approved and must be implemented.

Figure: 30 TAC §290.115(c)(5)(C)(ii)(I)

Number and Type of IDSE Sample Sites[1]

Population and water type	IDSE Site Type				
	Near Entry Points	Average Residence Time	Potential High TTHM Locations	Potential High HAA5 Locations	Total Number of Sites
Systems distributing surface water or groundwater under the direct influence of surface water (GUI)					
less than 500 that purchase treated surface water or GUI	1	-	-	-	2
less than 500 with no purchased water source	-	-	1	1	2
500 to 3,300 that purchase treated surface water or GUI	1	-	1	-	2
500 to 3,300 with no purchased water source	-	-	1	1	2
3,301 to 9,999	-	1	2	1	4
10,000 to 49,999	1	2	3	2	8
50,000 to 249,999	3	4	5	4	16
250,000 to 999,999	4	6	8	6	24
1,000,000 to 4,999,999	6	8	10	8	32
5,000,000 or more	8	10	12	10	40
Systems that only use groundwater not under the direct influence of surface water					
less than 500 that purchase treated groundwater	1	-	1	-	2
less than 500 with no purchased water source nonconsecutive systems	-	-	1	1	2
500 to 9,999	-	-	1	1	2
10,000 to 99,999	1	1	2	2	6
100,000 to 499,999	1	1	3	3	8
500,000 or more	2	2	4	4	12

1 If the number of entry points to the distribution system is fewer than the specified number of entry point monitoring locations, excess entry point samples must be replaced equally at high TTHM and HAA5 locations. If there is an odd extra location number, the system must take a sample at a high TTHM location. If the number of entry points to the distribution system is more than the specified number of entry point monitoring locations, the system must take samples at entry points to the distribution system having the highest annual water flows.

Figure: 30 TAC §290.115(c)(5)(C)(ii)(V)

Frequency of IDSE Monitoring

Population and Type of Water	Sampling Frequency and Timing
Systems distributing surface water or groundwater under the direct influence of surface water (GUI)	
less than 500 that purchase treated surface water or GUI	one (during peak historical month)
less than 500 with no purchased water source	
500 to 3,300 that purchase treated surface water or GUI	four (every 90 days)
500 to 3,300 with no purchased water source	
3,301 to 9,999	
10,000 to 49,999	six (every 60 days)
50,000 to 249,999	
250,000 to 999,999	
1,000,000 to 4,999,999	
5,000,000 or more	
Systems that only use groundwater not under the direct influence of surface water	
less than 500 that purchase treated groundwater	one (during hottest month)
less than 500 with no purchased water source nonconsecutive systems	
500 to 9,999	four (every 90 days)
10,000 to 99,999	
100,000 to 499,999	
500,000 or more	

1 A dual sample set with both a TTHM and an HAA5 sample must be taken at each monitoring location during each monitoring period.

2 The hottest month is the historical month is the month with the highest TTHM or HAA5 levels or the warmest water temperature. Monitoring must be conducted during the peak historical month for TTHM levels or HAA5 levels or the month of warmest water temperature. Available compliance, study, or operational data must be reviewed to determine the peak historical month for TTHM or HAA5 levels or warmest water temperature.

Figure: 30 TAC §290.117(h)(1)(D)

TABLE NO. 2

SYSTEM SIZE (No. [#] of people served)	INITIAL WQP DISTRIBUTION SITES	REDUCED WQP DISTRIBUTION SITES	NO. OF SITES FOR WQP MONITORING
>100,000	25	10	25
10,001 - 100,000	10	7	10
3,301 - 10,000	3	3	3
501 - 3,300	2	2	2
101 - 500	1	1	1
<101	1	1	1

Figure: 30 TAC §290.275(1)

Appendix A--Converting Maximum Contaminant Level Compliance Values for Consumer Confidence Reports

Key

AL =	Action Level
MCL =	Maximum Contaminant Level
MCLG =	Maximum Contaminant Level Goal
MFL =	million fibers per liter
mrem/year =	millirems per year (a measure of radiation absorbed by the body)
NTU =	Nephelometric Turbidity Units
pCi/L =	picocuries per liter (a measure of radioactivity)
ppm =	parts per million, or milligrams per liter (mg/L)
ppb =	parts per billion, or micrograms per liter (µg/L)
ppt =	parts per trillion, or nanograms per liter
ppq =	parts per quadrillion, or picograms per liter
TT =	Treatment Technique

Contaminant	MCL in compliance units (mg/L)	multiply by...	MCL in CCR units	MCLG in CCR units
Microbiological Contaminants				
1. Total Coliform Bacteria			For systems that collect 40 or more samples per month - Presence of coliform bacteria in more than 5% of monthly samples. For systems that collect fewer than 40 samples per month - Presence of coliform bacteria in more than 1 sample per month.	0

2. Fecal coliform and *E. coli* [~~E. coli~~]			A routine sample and a repeat sample are total coliform positive, and one is also fecal coliform or *E. coli* [~~E. coli~~] positive.	0
3. Fecal indicators (enterococci or coliphage)			TT	n/a
4. [~~3.~~] Total organic carbon			TT (ppm)	n/a
5. [~~4.~~] Turbidity			TT (NTU)	n/a
Radioactive Contaminants				
6. [~~5.~~] Beta/photon emitters	4 mrem/yr		4 mrem/yr	0
7. [~~6.~~] Alpha emitters	15 pCi/L		15 pCi/L	0
8. [~~7.~~] Combined radium	5 pCi/L		5 pCi/L	0
9. [~~8.~~] Uranium	30 µg/L		30 µg/L	0
Inorganic Contaminants				
10. [~~9.~~] Antimony	.006	1000	6 ppb	6
11. [~~10.~~] Arsenic	[~~.05~~] .010[+]	1000	[~~50~~] 10[+] ppb	n/a
12. [~~11.~~] Asbestos	7 MFL		7 MFL	7
13. [~~12.~~] Barium	2		2 ppm	2
14. [~~13.~~] Beryllium	.004	1000	4 ppb	4
15. [~~14.~~] Bromate	.010	1000	10 ppb	0
16. [~~15.~~] Cadmium	.005	1000	5 ppb	5
17. [~~16.~~] Chloramines	MRDL=4		MRDL=4 ppm	4
18. [~~17.~~] Chlorine	MRDL=4		MRDL=4 ppm	4
19. [~~18.~~] Chlorine Dioxide	MRDL=.8	1000	MRDL=800 ppb	800

20. [~~19.~~] Chlorite	1.0		1 ppm	0.8
21. [~~20.~~] Chromium	.1	1000	100 ppb	100
22. [~~21.~~] Copper	AL=1.3		AL=1.3 ppm[~~.~~]	1.3
23. [~~22.~~] Cyanide	.2	1000	200 ppb	200
24. [~~23.~~] Fluoride	4		4 ppm	4
25. [~~24.~~] Lead	AL=.015	1000	AL=15 ppb	0
26. [~~25.~~] Mercury (inorganic)	.002	1000	2 ppb	2
27. [~~26.~~] Nitrate (as Nitrogen)	10		10 ppm	10
28. [~~27.~~] Nitrite (as Nitrogen)	1		1 ppm	1
29. [~~28.~~] Selenium	.05	1000	50 ppb	50
30. [~~29.~~] Thallium	.002	1000	2 ppb	0.5
Synthetic Organic Contaminants including Pesticides and Herbicides				
31. [~~30.~~] 2,4-D	.07	1000	70 ppb	70
32. [~~31.~~] 2,4,5-TP (Silvex)	.05	1000	50 ppb	50
33. [~~32.~~] Acrylamide			TT	0
34. [~~33.~~] Alachlor	.002	1000	2 ppb	0
35. [~~34.~~] Atrazine	.003	1000	3 ppb	3
36. [~~35.~~] Benzo(a)pyrene (PAH)	.0002	1,000,000	200 ppt	0
37. [~~36.~~] Carbofuran	.04	1000	40 ppb	40
38. [~~37.~~] Chlordane	.002	1000	2 ppb	0
39. [~~38.~~] Dalapon	.2	1000	200 ppb	200
40. [~~39.~~] Di(2-ethylhexyl)adipate	.4	1000	400 ppb	400
41. [~~40.~~] Di(2-ethylhexyl) phthalate	.006	1000	6 ppb	0

42. [~~41.~~] Dibromochloropropane	.0002	1,000,000	200 ppt	0
43. [~~42.~~] Dinoseb	.007	1000	7 ppb	7
44. [~~43.~~] Diquat	.02	1000	20 ppb	20
45. [~~44.~~] Dioxin (2,3,7,8-TCDD)	.00000003	1,000,000,000	30 ppq	0
46. [~~45.~~] Endothall	.1	1000	100 ppb	100
47. [~~46.~~] Endrin	.002	1000	2 ppb	2
48. [~~47.~~] Epichlorohydrin			TT	0
49. [~~48.~~] Ethylene dibromide	.00005	1,000,000	50 ppt	0
50. [~~49.~~] Glyphosate	.7	1000	700 ppb	700
51. [~~50.~~] Heptachlor	.0004	1,000,000	400 ppt	0
52. [~~51.~~] Heptachlor epoxide	.0002	1,000,000	200 ppt	0
53. [~~52.~~] Hexachlorobenzene	.001	1000	1 ppb	0
54. [~~53.~~] Hexachloro-cyclopentadiene	.05	1000	50 ppb	50
55. [~~54.~~] Lindane	.0002	1,000,000	200 ppt	200
56. [~~55.~~] Methoxychlor	.04	1000	40 ppb	40
57. [~~56.~~] Oxamyl (Vydate)	.2	1000	200 ppb	200
58. [~~57.~~] PCBs (Polychlorinated biphenyls)	.0005	1,000,000	500 ppt	0
59. [~~58.~~] Pentachlorophenol	.001	1000	1 ppb	0
60. [~~59.~~] Picloram	.5	1000	500 ppb	500
61. [~~60.~~] Simazine	.004	1000	4 ppb	4
62. [~~61.~~] Toxaphene	.003	1000	3 ppb	0

Volatile Organic Contaminants

63. [~~62.~~] Benzene	.005	1000	5 ppb	0
64. [~~63.~~] Carbon tetrachloride	.005	1000	5 ppb	0
65. [~~64.~~] Chlorobenzene	.1	1000	100 ppb	100
66. [~~65.~~] o-Dichlorobenzene	.6	1000	600 ppb	600
67. [~~66.~~] p-Dichlorobenzene	.075	1000	75 ppb	75
68. [~~67.~~] 1,2-Dichloroethane	.005	1000	5 ppb	0
69. [~~68.~~] 1,1-Dichloroethylene	.007	1000	7 ppb	7
70. [~~69.~~] cis-1,2-Dichloroethylene	.07	1000	70 ppb	70
71. [~~70.~~] trans-1,2-Dichloroethylene	.1	1000	100 ppb	100
72. [~~71.~~] Dichloromethane	.005	1000	5 ppb	0
73. [~~72.~~] 1,2-Dichloropropane	.005	1000	5 ppb	0
74. [~~73.~~] Ethylbenzene	.7	1000	700 ppb	700
75. [~~74.~~] Haloacetic acids	0.060	1000	60 ppb	n/a
76. [~~75.~~] Styrene	.1	1000	100 ppb	100
77. [~~76.~~] Tetrachloroethylene	.005	1000	5 ppb	0
78. [~~77.~~] 1,2,4-Trichlorobenzene	.07	1000	70 ppb	70
79. [~~78.~~] 1,1,1-Trichloroethane	.2	1000	200 ppb	200
80. [~~79.~~] 1,1,2-Trichloroethane	.005	1000	5 ppb	3

81. [~~80.~~] Trichloroethylene	.005	1000	5 ppb	0
82. [~~81.~~] TTHMs (Total trihalomethanes)	.10	1000	100 ppb	n/a
83. [~~82.~~] Toluene	1		1 ppm	1
84. [~~83.~~] Vinyl Chloride	.002	1000	2 ppb	0
85. [~~84.~~] Xylenes	10		10 ppm	10

[~~[1] The .010 mg/L and 10 ppb arsenic levels are effective January 23, 2006. Until then, the MCL is 0.05 mg/L and there is no MCLG.~~]

Figure: 30 TAC §290.275(2)

Appendix B--Sources of Regulated Contaminants

Key

AL =	Action Level
MCL =	Maximum Contaminant Level
MCLG =	Maximum Contaminant Level Goal
MFL =	million fibers per liter
mrem/year =	millirems per year (a measure of radiation absorbed by the body)
NTU =	Nephelometric Turbidity Units
pCi/L =	picocuries per liter (a measure of radioactivity)
ppm =	parts per million, or milligrams per liter (mg/L)
ppb =	parts per billion, or micrograms per liter (µg/L)
ppt =	parts per trillion, or nanograms per liter
ppq =	parts per quadrillion, or picograms per liter
TT =	Treatment Technique

Contaminant (units)	**MCLG**	**MCL**	**Major sources in drinking water**
Microbiological Contaminants			
1. Total Coliform Bacteria	0	For systems that collect 40 or more samples per month - Presence of coliform bacteria in more than 5% of monthly samples. For systems that collect fewer than 40 samples per month - Presence of coliform bacteria in more than 1 sample per month.	Naturally present in the environment.
2. Fecal coliform and *E. coli* [~~E. coli~~]	0	A routine sample and a repeat sample are total coliform positive, and one is also fecal coliform or *E. coli* [~~E. coli~~] positive.	Human and animal fecal waste.

3. Fecal indicators (enterococci or coliphage)	n/a	TT	Human and animal fecal waste.
4. [~~3.~~] Total organic carbon (ppm)	n/a	TT	Naturally present in the environment.
5. [~~4.~~] Turbidity	n/a	TT	Soil runoff.
Radioactive Contaminants			
6. [~~5.~~] Beta/photon emitters (mrem/yr)	0	4	Decay of natural and man-made deposits.
7. [~~6.~~] Alpha emitters (pCi/L)	0	15	Erosion of natural deposits.
8. [~~7.~~] Combined radium (µg/L)	0	5	Erosion of natural deposits.
Inorganic Contaminants			
9. [~~8.~~] Uranium (µg/L)	0	30	Erosion of natural deposits.
10. [~~9.~~] Antimony (ppb)	6	6	Discharge from petroleum refineries; fire retardants; ceramics; electronics; solder.
11. [~~10.~~] Arsenic (ppb)	n/a	[~~50.~~] 10[$^{+1}$]	Erosion of natural deposits; Runoff from orchards; Runoff from glass and electronics production wastes.
12. [~~11.~~] Asbestos (MFL)	7	7	Decay of asbestos cement water mains; Erosion of natural deposits.
13. [~~12.~~] Barium (ppm)	2	2	Discharge of drilling wastes; Discharge from metal refineries; Erosion of natural deposits.
14. [~~13.~~] Beryllium (ppb)	4	4	Discharge from metal refineries and coal-burning factories; Discharge from electrical, aerospace, and defense industries.
15. [~~14.~~] Bromate (ppb)	0	10	By-product of drinking water disinfection.
16. [~~15.~~] Cadmium (ppb)	5	5	Corrosion of galvanized pipes; Erosion of natural deposits; Discharge from metal refineries; runoff from waste batteries and paints.

17. [~~16.~~] Chloramines (ppm)	MRDLG=4	MRDL=4	Water additive used to control microbes.
18. [~~17.~~] Chlorine (ppm)	MRDLG=4	MRDL=4	Water additive used to control microbes.
19. [~~18.~~] Chlorine Dioxide (ppb)	800	800	Water additive used to control microbes.
20. [~~19.~~] Chlorite (ppm)	1.0	1.0	By-product of drinking water disinfection.
21. [~~20.~~] Chromium (ppb)	100	100	Discharge from steel and pulp mills; Erosion of natural deposits.
22. [~~21.~~] Copper (ppm)	1.3	AL=1.3	Corrosion of household plumbing systems; Erosion of natural deposits.
23. [~~22.~~] Cyanide (ppb)	200	200	Discharge from steel/metal factories; Discharge from plastic and fertilizer factories.
24. [~~23.~~] Fluoride (ppm)	4	4	Erosion of natural deposits; Water additive which promotes strong teeth; Discharge from fertilizer and aluminum factories.
25. [~~24.~~] Lead (ppb)	0	AL=15	Corrosion of household plumbing systems; Erosion of natural deposits.
26. [~~25.~~] Mercury (inorganic) (ppb)	2	2	Erosion of natural deposits; Discharge from refineries and factories; Runoff from landfills; Runoff from cropland.
27. [~~26.~~] Nitrate (as Nitrogen) (ppm)	10	10	Runoff from fertilizer use; Leaching from septic tanks, sewage; Erosion of natural deposits.
28. [~~27.~~] Nitrite (as Nitrogen) (ppm)	1	1	Runoff from fertilizer use; Leaching from septic tanks, sewage; Erosion of natural deposits.
29. [~~28.~~] Selenium (ppb)	50	50	Discharge from petroleum and metal refineries; Erosion of natural deposits; Discharge from mines.

30. [~~29.~~] Thallium (ppb)	0.5	2	Leaching from ore-processing sites; Discharge from electronics, glass, and drug factories.
Synthetic Organic Contaminants including Pesticides and Herbicides			
31. [~~30.~~] 2,4-D (ppb)	70	70	Runoff from herbicide used on row crops.
32. [~~31.~~] 2,4,5-TP (Silvex) (ppb)	50	50	Residue of banned herbicide.
33. [~~32.~~] Acrylamide	0	TT	Added to water during sewage/wastewater treatment.
34. [~~33.~~] Alachlor (ppb)	0	2	Runoff from herbicide used on row crops.
35. [~~34.~~] Atrazine (ppb)	3	3	Runoff from herbicide used on row crops.
36. [~~35.~~] Benzo(a)pyrene (PAH) (nanograms/L)	0	200	Leaching from linings of water storage tanks and distribution lines.
37. [~~36.~~] Carbofuran (ppb)	40	40	Leaching of soil fumigant used on rice and alfalfa.
38. [~~37.~~] Chlordane (ppb)	0	2	Residue of banned termiticide.
39. [~~38.~~] Dalapon (ppb)	200	200	Runoff from herbicide used on rights of way.
40. [~~39.~~] Di(2-ethylhexyl) adipate (ppb)	400	400	Discharge from chemical factories.
41. [~~40.~~] Di(2-ethylhexyl) phthalate (ppb)	0	6	Discharge from rubber and chemical factories.
42. [~~41.~~] Dibromochloropropane (ppt)	0	200	Runoff/leaching from soil fumigant used on soybeans, cotton, pineapples, and orchards.
43. [~~42.~~] Dinoseb (ppb)	7	7	Runoff from herbicide used on soybeans and vegetables.
44. [~~43.~~] Diquat (ppb)	20	20	Runoff from herbicide use.
45. [~~44.~~] Dioxin (2,3,7,8-TCDD) (ppq)	0	30	Emissions from waste incineration and other combustion; Discharge from chemical factories.

46. [~~45.~~] Endothall (ppb)	100	100	Runoff from herbicide use.
47. [~~46.~~] Endrin (ppb)	2	2	Residue of banned insecticide.
48. [~~47.~~] Epichlorohydrin	0	TT	Discharge from industrial chemical factories; An impurity of some water treatment chemicals.
49. [~~48.~~] Ethylene dibromide (ppt)	0	50	Discharge from petroleum refineries.
50. [~~49.~~] Glyphosate (ppb)	700	700	Runoff from herbicide use.
51. [~~50.~~] Heptachlor (ppt)	0	400	Residue of banned termiticide.
52. [~~51.~~] Heptachlor epoxide (ppt)	0	200	Breakdown of heptachlor.
53. [~~52.~~] Hexachlorobenzene (ppb)	0	1	Discharge from metal refineries and agricultural chemical factories.
54. [~~53.~~] Hexachlorocyclopentadiene (ppb)	50	50	Discharge from chemical factories.
55. [~~54.~~] Lindane (ppt)	200	200	Runoff/leaching from insecticide used on cattle, lumber, gardens.
56. [~~55.~~] Methoxychlor (ppb)	40	40	Runoff/leaching from insecticide used on fruits, vegetables, alfalfa, livestock.
57. [~~56.~~] Oxamyl (Vydate) (ppb)	200	200	Runoff/leaching from insecticide used on apples, potatoes, and tomatoes.
58. [~~57.~~] PCBs (Polychlorinated biphenyls) (ppt)	0	500	Runoff from landfills; Discharge of waste chemicals.
59. [~~58.~~] Pentachlorophenol (ppb)	0	1	Discharge from wood preserving factories.
60. [~~59.~~] Picloram (ppb)	500	500	Herbicide runoff.
61. [~~60.~~] Simazine (ppb)	4	4	Herbicide runoff.
62. [~~61.~~] Toxaphene (ppb)	0	3	Runoff/leaching from insecticide used on cotton and cattle.

Volatile Organic Compounds			
63. [~~62.~~] Benzene (ppb)	0	5	Discharge from factories; Leaching from gas storage tanks and landfills.
64. [~~63.~~] Carbon tetrachloride (ppb)	0	5	Discharge from chemical plants and other industrial activities.
65. [~~64.~~] Chlorobenzene (ppb)	100	100	Discharge from chemical and agricultural chemical factories.
66. [~~65.~~] o-Dichlorobenzene (ppb)	600	600	Discharge from industrial chemical factories.
67. [~~66.~~] p-Dichlorobenzene (ppb)	75	75	Discharge from industrial chemical factories.
68. [~~67.~~] 1,2-Dichloroethane (ppb)	0	5	Discharge from industrial chemical factories.
69. [~~68.~~] 1,1-Dichloroethylene (ppb)	7	7	Discharge from industrial chemical factories.
70. [~~69.~~] cis-1,2-Dichloroethylene (ppb)	70	70	Discharge from industrial chemical factories.
71. [~~70.~~] trans-1,2-Dichloroethylene (ppb)	100	100	Discharge from industrial chemical factories.
72. [~~71.~~] Dichloromethane (ppb)	0	5	Discharge from pharmaceutical and chemical factories.
73. [~~72.~~] 1,2-Dichloropropane (ppb)	0	5	Discharge from industrial chemical factories.
74. [~~73.~~] Ethylbenzene (ppb)	700	700	Discharge from petroleum refineries.
75. [~~74.~~] Haloacetic acids (HAA) (ppb)	n/a	60	By-product of drinking water disinfection.
76. [~~75.~~] Styrene (ppb)	100	100	Discharge from rubber and plastic factories; Leaching from landfills.
77. [~~76.~~] Tetrachloroethylene (ppb)	0	5	Leaching from PVC pipes; Discharge from factories and dry cleaners.
78. [~~77.~~] 1,2,4-Trichlorobenzene (ppb)	70	70	Discharge from textile-finishing factories.

79. [~~78.~~] 1,1,1-Trichloroethane (ppb)	200	200	Discharge from metal degreasing sites and other factories.
80. [~~79.~~] 1,1,2-Trichloroethane (ppb)	3	5	Discharge from industrial chemical factories.
81. [~~80.~~] Trichloroethylene (ppb)	0	5	Discharge from metal degreasing sites and other factories.
82. [~~81.~~] TTHMs (Total trihalomethanes) (ppb)	n/a	80	By-product of drinking water disinfection.
83. [~~82.~~] Toluene (ppm)	1	1	Discharge from petroleum factories.
84. [~~83.~~] Vinyl Chloride (ppb)	0	2	Leaching from PVC piping; Discharge from plastics factories.
85. [~~84.~~] Xylenes (ppm)	10	10	Discharge from petroleum factories; Discharge from chemical factories.

[~~[1] The 10 ppb arsenic level is effective January 23, 2006. Until then, the MCL is 0.05 mg/L and there is no MCLG.~~]

Figure: 30 TAC §290.275(3)

Appendix C--Health Effects Language

Microbiological Contaminants

(1) Total coliform [~~Coliform~~]. Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.

(2) Fecal coliform/ *E. coli* [~~E.Coli~~]. Fecal coliforms and *E. coli* [~~E. coli~~] are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, and people with severely compromised immune systems.

(3) Fecal indicators (enterococci or coliphage). Fecal indicators are microbes whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term health effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.

(4) [~~(3)~~] Total organic carbon. Total organic carbon (TOC) has no health affects. However, TOC provides a medium for the formation of disinfection by-products. These by-products include trihalomethanes (THMs) and haloacetic acids (HAAs). Drinking water containing these by-products in excess of the maximum contaminant level (MCL) may lead to adverse health effects, liver or kidney problems, or nervous system effects, and may lead to an increased risk of getting cancer.

(5) [~~(4)~~] Turbidity. Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

Radioactive Contaminants

(6) [~~(5)~~] Beta/photon emitters. Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.

(7) [~~(6)~~] Alpha emitters. Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.

(8) [~~(7)~~] Combined Radium 226/228. Some people who drink water containing radium 226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer.

(9) [~~(8)~~] Uranium. Some people who drink water containing uranium in excess of the MCL over many years may have an increased risk of getting cancer and kidney toxicity.

Inorganic Contaminants

(10) [~~(9)~~] Antimony. Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.

(11) [~~(10)~~] Arsenic. Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.

(12) [~~(11)~~] Asbestos. Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.

(13) [~~(12)~~] Barium. Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.

(14) [~~(13)~~] Beryllium. Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.

(15) [~~(14)~~] Bromate. Some people who drink water containing bromate in excess of the MCL over many years could experience an increased risk of getting cancer.

(16) [~~(15)~~] Cadmium. Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.

(17) [~~(16)~~] Chloramines. Some people who use water containing chloramines well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the maximum residual disinfectant level (MRDL) could experience stomach discomfort or anemia.

(18) [~~(17)~~] Chlorine. Some people who use water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.

(19) [~~(18)~~] Chlorine dioxide. Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia.

(20) [~~(19)~~] Chlorite. Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorite in excess of the MCL. Some people may experience anemia.

(21) [~~(20)~~] Chromium. Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.

(22) [~~(21)~~] Copper. Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.

(23) [~~(22)~~] Cyanide. Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.

(24) [~~(23)~~] Fluoride. Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Children may get mottled teeth.

(25) [~~(24)~~] Lead. Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.

(26) [~~(25)~~] Mercury (inorganic). Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.

(27) [~~(26)~~] Nitrate. Infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue-baby syndrome.

(28) [~~(27)~~] Nitrite. Infants below the age of six months who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue-baby syndrome.

(29) [~~(28)~~] Selenium. Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation.

(30) [~~(29)~~] Thallium. Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.

Synthetic Organic Contaminants Including Pesticides and Herbicides

(31) [~~(30)~~] 2,4-D. Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.

(32) [~~(31)~~] 2,4,5-TP (Silvex). Some people who drink water containing silvex in excess of the MCL over many years could experience liver problems.

(33) [~~(32)~~] Acrylamide. Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer.

(34) [~~(33)~~] Alachlor. Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.

(35) [~~(34)~~] Atrazine. Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.

(36) [~~(35)~~] Benzo(a)pyrene (PAH). Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.

(37) [~~(36)~~] Carbofuran. Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood, or nervous or reproductive systems.

(38) [~~(37)~~] Chlordane. Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.

(39) [~~(38)~~] Dalapon. Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.

(40) [~~(39)~~] Di (2-ethylhexyl) adipate. Some people who drink water containing di (2-ethylhexyl) adipate well in excess of the MCL over many years could experience general toxic effects such as weight loss, liver enlargement, or possible reproductive difficulties.

(41) [~~(40)~~] Di (2-ethylhexyl) phthalate. Some people who drink water containing di (2-ethylhexyl) phthalate in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.

(42) [~~(41)~~] Dibromochloropropane (DBCP). Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.

(43) [~~(42)~~] Dinoseb. Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.

(44) [~~(43)~~] Dioxin (2,3,7,8-TCDD). Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.

(45) [~~(44)~~] Diquat. Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.

(46) [~~(45)~~] Endothall. Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.

(47) [~~(46)~~] Endrin. Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.

(48) [~~(47)~~] Epichlorohydrin. Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.

(49) [~~(48)~~] Ethylene dibromide. Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer.

(50) [~~(49)~~] **Glyphosate.** Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.

(51) [~~(50)~~] **Heptachlor.** Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.

(52) [~~(51)~~] **Heptachlor epoxide.** Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage, and may have an increased risk of getting cancer.

(53) [~~(52)~~] Hexachlorobenzene. Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys, or adverse reproductive effects, and may have an increased risk of getting cancer.

(54) [~~(53)~~] Hexachlorocyclopentadiene. Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their kidneys or stomach.

(55) [~~(54)~~] Lindane. Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.

(56) [~~(55)~~] Methoxychlor. Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.

(57) [~~(56)~~] Oxamyl. Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.

(58) [~~(57)~~] PCBs. Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.

(59) [~~(58)~~] Pentachlorophenol. Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.

(60) [~~(59)~~] Picloram. Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.

(61) [~~(60)~~] Simazine. Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.

(62) [~~(61)~~] Toxaphene. Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid, and may have an increased risk of getting cancer.

Volatile Organic Contaminants

(63) [~~(62)~~] Benzene. Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.

(64) [~~(63)~~] Carbon Tetrachloride. Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.

(65) [~~(64)~~] Chlorobenzene. Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.

(66) [~~(65)~~] o-Dichlorobenzene. Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.

(67) [~~(66)~~] p-Dichlorobenzene. Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood.

(68) [~~(67)~~] 1,2-Dichloroethane. Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.

(69) [~~(68)~~] 1,1-Dichloroethylene. Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.

(70) [~~(69)~~] cis-1,2-Dichloroethylene. Some people who drink water containing cis-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.

(71) [~~(70)~~] trans-1,2-Dicholoroethylene. Some people who drink water containing trans-1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver.

(72) [~~(71)~~] Dichloromethane. Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.

(73) [~~(72)~~] 1,2-Dichloropropane. Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.

(74) [~~(73)~~] Ethylbenzene. Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.

(75) [~~(74)~~] Haloacetic acids (HAAs). Some people who drink water containing HAAs in excess of the MCL over many years may have an increased risk of getting cancer.

(76) [~~(75)~~] Styrene. Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.

(77) [~~(76)~~] Tetrachloroethylene. Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, and may have an increased risk of getting cancer.

(78) [~~(77)~~] 1,2,4-Trichlorobenzene. Some people who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.

(79) [~~(78)~~] 1,1,1,-Trichloroethane. Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.

(80) [~~(79)~~] 1,1,2-Trichloroethane. Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune systems.

(81) [~~(80)~~] Trichloroethylene. Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.

(82) [~~(81)~~] TTHMs (Total Trihalomethanes). Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous systems, and may have an increased risk of getting cancer.

(83) [~~(82)~~] Toluene. Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.

(84) [~~(83)~~] Vinyl Chloride. Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.

(85) [~~(84)~~] Xylenes. Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.

Figure: 30 TAC §335.1(133)(D)(iv)

TABLE 1

	Use Constituting Disposal S.W. Def. (D)(i)(1)	Energy Recovery/Fuel S.W. Def. (D)(ii)(2)	Reclamation S.W. Def. (D)(iii)(3)[2]	Speculative Accumulation S.W. Def. (D)(iv)(4)
Spent materials (listed hazardous & not listed characteristically hazardous)	*	*	*	*
Spent materials (nonhazardous)[1]	*	*	*	*
Sludges (listed hazardous in 40 CFR §261.31 or §261.32)	*	*	*	*
Sludges (not listed characteristically hazardous)	*	*		*
Sludges (nonhazardous)[1]	*	*		*
By-products (listed hazardous in 40 CFR §261.31 or §261.32)	*	*	*	*
By-products (not listed characteristically hazardous)	*	*		*
By-products (nonhazardous)[1]	*	*		*
Commercial chemical products (listed, not listed characteristically hazardous, and nonhazardous)	*	*		

Scrap metal other than excluded scrap metal (see §335.17(9)) (hazardous)	*	*	*	*
Scrap metal other than excluded scrap metal (see §335.17(9)) (nonhazardous)1	*	*	*	*

NOTE: The terms "spent materials," "sludges," "by-products," "scrap metal," and "excluded scrap metal" are defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials).

[1] These materials are governed by the provisions of §335.24(h) only.

[2] Except as provided in 40 CFR §261.4(a)(17) for mineral processing secondary materials.

Figure: 40 TAC §711.401(a)

The investigator notifies...	Within...	Does the investigator reveal the identity of the reporter?
The administrator or CEO	One hour of receipt of the allegation by DFPS.	Only if the alleged perpetrator is a Mental Health Services Provider and the allegation is sexual exploitation.
DADS Office of Consumer Rights and Services, by fax, at (512) 438-4302 of allegations involving an HCSW provider.	24 hours of receipt of the allegation by DFPS or the next working day.	
Law enforcement of any allegation involving a child.	One hour of receipt of the allegation by DFPS.	Yes
Law Enforcement of allegations involving serious physical injury, sexual abuse, or death of an adult person served.		

Figure: 40 TAC §711.401(b)

The Investigator notifies...	Within....	Does the investigator reveal the identity of the reporter?
For State Hospitals - The DSHS Office of Consumer Services and Rights Protection at (800) 252-8154.	One hour of receipt of the allegation by DFPS.	Only if the alleged perpetrator is a Mental Health Services Provider and the allegation is sexual exploitation.
For State Schools and State Centers - The DADS Office of Consumer Rights and Services at (800) 458-9858.		
For HCSW Programs - The Administrator or CEO to request a HCSW CEO/Administrator Designee. Notification is then made to the HCSW CEO/Administrator Designee.		
For Community Centers - The DADS Office of Consumer Rights and Services at (800) 458-9858 and the Chair of the Community Center Board of Trustees.	24 hours of receipt of the allegation by DFPS or the next working day.	

Figure: 40 TAC §711.415

If the priority assigned to the investigation is . . .	then the investigator must make face-to-face contact with the alleged victim within . . .
I,	24 hours of receipt of the allegation by DFPS.
II,	three calendar days of receipt of the allegation by DFPS.
III,	seven calendar days of receipt of the allegation by DFPS.

Figure: 40 TAC §711.417(a)

If the priority assigned to the investigation is . . .	then the investigator must complete the investigation within . . .
I or II,	14 calendar days of receipt of the allegation by DFPS.
III,	21 calendar days of receipt of the allegation by DFPS.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Notice of Change in Funding Areas for Texas-Israel Exchange Grant Program Request for Proposals

The Texas Department of Agriculture (TDA) published a Request for Proposals (RFP) soliciting grant proposals for this program in the July 13, 2007, issue of the *Texas Register* (32 TexReg 4461). TDA is revising Funding Area 3. Horticulture (excluding floriculture), field and garden crops - including drought tolerance to read as follows: "3. Horticulture, field and garden crops - including drought tolerance." All other terms and requirements of the RFP remain the same.

Please contact Ms. Catherine Wright Steele at (512) 463-7700 or by e-mail at: catherine.wright-steele@tda.state.tx.us if you have any questions.

TRD-200703359
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: August 1, 2007

♦ ♦ ♦

Texas Building and Procurement Commission

Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Texas Department of Transportation (TxDOT), announces the issuance of Request for Proposals (RFP) #303-8-10032. TBPC seeks a five (5) year lease of approximately 12,960 square feet of office space in Austin, Travis County, Texas.

The deadline for questions is August 6, 2007 and the deadline for proposals is August 15, 2007 at 3:00 p.m. The award date is September 4, 2007. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Myra Beer at (512) 463-5773. A copy of the RFP may be downloaded from the *Electronic State Business Daily* at http://esbd.tbpc.state.tx.us/bid_show.cfm?bidid=71883.

TRD-200703253
Kay Molina
General Counsel
Texas Building and Procurement Commission
Filed: July 27, 2007

♦ ♦ ♦

Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Texas Department of Licensing and Regulation (TDLR) and the Texas Residential Construction Commission (TRCC), announces the issuance of Request for Proposals (RFP) #303-8-10078. TBPC seeks a five (5) year lease of approximately 28,839 square feet of office space in Austin, Travis County, Texas.

The deadline for questions is August 7, 2007 and the deadline for proposals is August 17, 2007 at 3:00 p.m. The award date is September 4, 2007. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Myra Beer at (512) 463-5773. A copy of the RFP may be downloaded from the *Electronic State Business Daily* at http://esbd.tbpc.state.tx.us/bid_show.cfm?bidid=71884.

TRD-200703254
Kay Molina
General Counsel
Texas Building and Procurement Commission
Filed: July 27, 2007

♦ ♦ ♦

Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Department of Family and Protective Services, announces the issuance of Request for Proposals (RFP) #303-8-10088. TBPC seeks a 5 or 10 year lease of approximately 4,594 square feet of office space in Greenville, Hunt County, Texas.

The deadline for questions is August 14, 2007 and the deadline for proposals is August 24, 2007 at 3:00 p.m. The award date is September 7, 2007. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Myra Beer at (512) 463-5773. A copy of the RFP may be downloaded from the *Electronic State Business Daily* at http://esbd.tbpc.state.tx.us/bid_show.cfm?bidid=72121.

TRD-200703304
Kay Molina
General Counsel
Texas Building and Procurement Commission
Filed: July 27, 2007

♦ ♦ ♦

Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Texas Department of Criminal Justice, announces the issuance of Request for Proposals (RFP) #303-8-10900. TBPC seeks a 10 year lease of approximately 10,884 square feet of office space in Fort Worth, Tarrant County, Texas.

The deadline for questions is August 14, 2007 and the deadline for proposals is August 24, 2007 at 3:00 p.m. The award date is September 12, 2007. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Myra Beer at (512) 463-5773. A copy of the RFP may be downloaded from the *Electronic State Business Daily* at http://esbd.tbpc.state.tx.us/bid_show.cfm?bidid=72122.

TRD-200703305
Kay Molina
General Counsel
Texas Building and Procurement Commission
Filed: July 27, 2007

♦ ♦ ♦

Texas Cancer Council

Request for Proposal

Improving Screening and Early Detection of Cancer Among African Americans in Texas (RFP #2008-01)

FOR A MORE DETAILED ANNOUNCEMENT VISIT WWW.TCC.STATE.TX.US

Notice of Invitation:

The Texas Cancer Council announces the availability of state funds to be awarded to support the goals of the *Texas Cancer Plan*. The selected program will implement Goal II-Early Detection and Treatment. Funds will be awarded to selected applicants to provide a community-based program to educate African Americans in Texas about cancer screening and early detection; facilitate access to screening and diagnostic services, treatment, and clinical trials; and reduce disparities in access to quality cancer screening, diagnosis, and treatment. First year funding for program planning and development will be awarded from December 2007 through August 31, 2008 with a maximum funding amount of $60,000. Successful programs may be invited to apply for funding for an additional three years for program implementation at $100,000 per year. Programs demonstrating progress in achieving sustainability will be invited to apply for a final year of funding at $40,000. It is anticipated that up to three projects will be selected under this initiative to receive funding.

Introduction:

The Texas Cancer Council (TCC) is the state agency dedicated to reducing the human and economic impact of cancer on Texans through the promotion and support of collaborative, innovative, and effective programs and policies for cancer prevention and control.

Purpose:

TCC is seeking to fund a program that is consistent with the *Texas Cancer Plan* and increases knowledge among the African American public about lung, breast, prostate, and colorectal cancer; enhances the likelihood that African Americans seek and access quality cancer screening, diagnosis, treatment, and clinical trials; and works to reduce disparities in cancer diagnosis and care for African Americans.

A successful program will:

* Clearly identify intended program outcomes and performance objectives;

* Conduct a community needs assessment to access behavioral and environmental factors contributing to reduced screening rates, reduced access to care, and disparities; identify gaps and barriers;

* Use a group participatory process to identify behavioral and environmental factors that will require change in order to meet intended program outcomes;

* Identify determinants, including knowledge deficits, motivational factors (such as fear, cultural norms, belief in effectiveness of screening or self efficacy to obtain care) that are related to low screening rates and would be targets for change;

* Identify intervention strategies that, based on established theory and practice, have a high likelihood for accomplishing desired change;

* Use methods and strategies that are culturally appropriate;

* Work through community coalitions or groups to leverage resources and expertise;

* Work through community systems and organizations appropriate for reaching African Americans;

* Adopt existing, or develop new, program strategies that are science-based and target stated outcome objectives;

* Adopt existing evidence-based practices, when available, accessible, and cost effective;

* Ensure that newly developed materials and resources do not duplicate existing materials and resources;

* Implement strategies that maximize program reach and are cost effective without compromising overall program outcomes;

* Conduct outcome evaluation that demonstrates the effectiveness of program interventions at achieving stated objectives;

* Conduct process evaluation that demonstrates the project provided the proposed strategies (output measurement).

In the first year proposal, the applicant will address those program activities that will be accomplished by August 31, 2008. These should include infrastructure development, planning, conducting needs assessment, establishing groups and partnerships, identifying and developing program strategies, obtaining program resources and materials, developing an evaluation plan, and beginning program implementation. Information concerning future project years may be included as an attachment.

Eligibility Requirements:

To be considered for funding, an application must be submitted by an entity or individual that will serve as the fiscal agent and legal contractor for the project. The lead entity may be a governmental agency, educational institution, a nonprofit organization, a for-profit organization or an individual applicant.

Applicant Qualifications:

The applicant will:

* Demonstrate the ability to work with African American community members as active participants and collaborators through letters of support;

* Describe previous success in providing community outreach to African Americans;

* Have expertise in cancer issues or partner with entities that can provide cancer-specific medical expertise;

* Have an infrastructure that can accommodate the proposed activities;

* Demonstrate ability to obtain and assess cancer, risk behavior, and population data to justify need for program interventions;

* Have experience in process and outcome evaluation or partner/contract with a program evaluation expert.

Proposal Requirements:

One original proposal **and five copies** are due at the TCC office by **5:00 p.m. on Friday, September 21, 2007**. Proposals must be submitted according to the Council's *Proposal Guide* utilizing TCC proposal forms. Proposals sent electronically or by facsimile machine will not be accepted. Incomplete and late proposals will not be accepted. The *Proposal Guide* provides instructions for completing the proposal forms. The *Project Guide* provides information about disallowable expenses, reimbursement policies, legislative performance measures, and reporting requirements. Interested parties should obtain, from the TCC website at www.tcc.state.tx.us:

* *Proposal Guide* in pdf;

* Proposal forms in Word;

* *Project Guide* in pdf.

A copy of the *Texas Cancer Plan* can be obtained by calling (512) 463-3190 or can be found on the web.

Funding Awards:

TCC staff will review proposals for completeness and technical merit. The Council will make final funding decisions during November 2007. All applicants will receive written notification of the Council's decisions regarding their proposals within two weeks of the Council's decisions.

The Council's funding decision will be based on:

* Applicant's qualifications to successfully accomplish the program;

* Evidence of a sound and effective program supported by established theory and practice;

* Ability of the program to address gaps, avoid duplication, and leverage resources to maximize program reach;

* Ability of the program to measure and report process and outcome evaluation results;

* Program targets geographic areas with greatest need;

* Reasonableness of budgeted amounts and appropriateness of budget justifications;

* Completeness and clarity of the proposal.

All TCC projects are funded via a cost reimbursement basis. Reimbursement may be submitted monthly or quarterly, as preferred by the project.

Funding is based on the merit of the proposal received and the availability of funds

The Council has sole discretion and reserves the right to reject any or all proposals received in response to this funding announcement. This announcement does not constitute a commitment by the Council to award a contract or to pay costs incurred in the preparation of a proposal.

Additional information:

For additional information about this funding announcement, contact Jane Osmond, Program Manager, Texas Cancer Council, P.O. Box 12097, Austin, Texas 78711, (512) 438-3060, or josmond@tcc.state.tx.us.

TRD-200703366
Sandra Balderrama
Executive Director
Texas Cancer Council
Filed: August 1, 2007

♦ ♦ ♦

Request for Proposal

Improving Access to Cancer Information and Services for Colonias Residents Along the Texas Mexico Border (RFP #2008-02)

FOR A MORE DETAILED ANNOUNCEMENT VISIT WWW.TCC.STATE.TX.US

Notice of Invitation:

The Texas Cancer Council announces the availability of state funds to be awarded to support the goals of the *Texas Cancer Plan*. The selected program will implement three goals: Goal II-Early Detection and Treatment, Goal III - Professional Education, and Goal V - Survivorship. Funds will be awarded to selected applicants to provide a community-based program to educate Colonias residents in Texas about cancer screening and early detection; facilitate access to screening, diagnostic, treatment, and support services; improve quality of life for cancer survivors and their caregivers, and educate medical professionals about the unique cultural and social issues of this special population. First year funding for program planning and development will be awarded from December 2007 through August 31, 2008 with a maximum funding amount of $60,000. Successful programs may be invited to apply for funding for an additional three years for program implementation at $100,000 per year. Programs demonstrating progress in achieving sustainability will be invited to apply for a final year of funding at $40,000. It is anticipated that up to three projects will be selected under this initiative to receive Council funding.

Introduction:

The Texas Cancer Council (TCC) is the state agency dedicated to reducing the human and economic impact of cancer on Texans through the promotion and support of collaborative, innovative, and effective programs and policies for cancer prevention and control.

Purpose:

TCC is seeking to fund a program that is consistent with the *Texas Cancer Plan* and educates colonias residents in Texas about cancer screening and early detection; facilitates access to diagnostic, treatment, and support services; improves quality of life for cancer survivors and their caregivers; and educates medical professionals about the unique cultural and social issues of this special population.

A successful program will:

* Clearly identify intended program outcomes and performance objectives; Conduct a community needs assessment to access behavioral and environmental factors contributing to reduced screening rates, reduced access to care, and disparities; identify gaps and barriers;

* Use a group participatory process to identify behavioral and environmental factors that will require change in order to meet intended program outcomes;

* Identify determinants, including knowledge deficits, motivational factors (such as fear, cultural norms, belief in effectiveness of screening or self efficacy to obtain care) that are related to low screening rates and would be targets for change;

* Identify intervention strategies that, based on established theory and practice, have a high likelihood for accomplishing desired change;

* Use methods and strategies that are culturally appropriate;

* Use Promotoras for community outreach;

* Develop, or expand existing, cancer curriculum for Promotora training;

* Work through community coalitions or groups to leverage resources and expertise;

* Work through community systems and organizations appropriate for reaching colonias residents;

* Work in collaboration with existing organizations addressing border health issues, including local Health and Human Service staff, Community Centers, Texas A&M Community Housing and Urban Development's Colonias Initiative, Texas A&M School of Rural Public Health, Latinos in a Network for Cancer Control, and the Cancer Nutrition Network for Texans;

* Adopt existing, or develop new, program strategies that are science-based and target stated objectives;

* Adopt existing evidence-based practices, when available, accessible, and cost effective;

* Ensure that newly developed materials and resources do not duplicate existing materials and resources;

* Implement strategies that maximize program reach and are cost effective without compromising overall program outcomes;

* Conduct outcome evaluation that demonstrates the effectiveness of program interventions at achieving stated objectives;

* Conduct process evaluation that demonstrates the project provided the proposed strategies (output measurement).

In the first year proposal, the applicant will address those program activities that will be accomplished by August 31, 2008. These should include infrastructure development, planning, conducting needs assessment, establishing groups and partnerships, identifying and developing program strategies, obtaining program resources and materials, developing an evaluation plan, and beginning program implementation. Information concerning future project years may be included as an attachment.

Eligibility Requirements:

To be considered for funding, a proposal must be submitted by an entity or individual that will serve as the fiscal agent and legal contractor for the project. The lead entity may be a governmental agency, educational institution, a nonprofit organization, a for-profit organization or an individual applicant.

Applicant Qualifications:

The applicant will:

* Demonstrate support from organizations serving the colonias communities with letters of support;

* Describe previous success in providing community outreach to colonias residents;

* Have expertise in cancer issues or partner with entities that can provide cancer-specific medical expertise;

* Demonstrate ability to obtain and assess cancer, risk behavior, and population data to justify need for program interventions;

* Have an infrastructure that can accommodate the proposed activities, including support for the use of Promotoras;

* Have experience in process and outcome evaluation or partner/contract with a program evaluation expert.

Proposal Requirements:

One original proposal **and five copies** are due at the TCC office by **5:00 p.m. on Friday, September 21, 2007**. Proposals must be submitted according to the TCC *Proposal Guide* utilizing proposal forms. Proposals sent electronically or by facsimile machine will not be accepted. Incomplete and late proposals will not be accepted. The *Proposal Guide* provides instructions for completing the proposal forms. The *Project Guide* provides information about disallowable expenses, reimbursement policies, legislative performance measures, and reporting requirements. Interested parties should obtain, from the TCC website at www.tcc.state.tx.us:

* *Proposal Guide* in pdf;

* Proposal forms in Word;

* *Project Guide* in pdf.

A copy of the Texas Cancer Plan can be obtained by calling (512) 463-3190 or can be found on the web.

Funding Awards:

TCC staff will review proposals for completeness and technical merit. The Council will make final funding decisions in November 2007. All applicants will receive written notification of the Council's decisions regarding their proposals within two weeks of the Council's decisions.

The Council's funding decision will be based on:

* Applicant's qualifications to successfully accomplish the program;

* Evidence of a sound and effective program supported by established theory and practice;

* Ability of the program to address gaps, avoid duplication, and leverage resources to maximize program reach;

* Ability of the program to measure and report process and outcome evaluation results;

* Reasonableness of budgeted amounts and appropriateness of budget justifications;

* Completeness and clarity of the proposal.

All TCC projects are funded via a cost reimbursement basis. Reimbursement may be submitted monthly or quarterly, as preferred by the project. Funding is based on the merit of the proposal received and the availability of funds. The Council has sole discretion and reserves the right to reject any or all proposals received in response to this funding announcement. This announcement does not constitute a commitment by the Council to award a contract or to pay costs incurred in the preparation of a proposal.

Additional information:

For additional information about this funding announcement, contact Jane Osmond, Program Manager, Texas Cancer Council, P.O. Box 12097, Austin, Texas 78711, (512) 438-3060, or josmond@tcc.state.tx.us.

TRD-200703367
Sandra Balderrama
Executive Director
Texas Cancer Council
Filed: August 1, 2007

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of July 20, 2007, through July 26, 2007. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on August 1, 2007. The public comment period for this project will close at 5:00 p.m. on August 31, 2007.

FEDERAL AGENCY ACTIONS:

Applicant: The Endeavour; Location: The project is located on Clear Lake, at 3901 NASA Parkway, east of the Kirby Drive intersection, in Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: League City, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 15; Easting: 300185; Northing: 327239. Project Description: This notice is to address design changes to the proposed project subsequent the initial public notice published on February 14, 2007. Initially, the applicant proposed to construct a 28-slip 12,031-square-foot pier and to discharge riprap for erosion protection to provide aquatic recreation to a condominium project currently under construction. As a result of comments gathered from the public notice, the proposed project was modified to an 18-slip 6,643-square-foot structure. Approximately 70 feet of the proposed boardwalk has been eliminated, as well as the proposed finger pier over the wave attenuation barrier. The T-head pier has been reduced to a 90-foot by 10-foot structure from the 149.9-foot by 34-foot structure included in the initial public notice. In addition, 16 timber pilings will be installed between the finger piers to create the slips instead of the 28 pilings originally proposed.

The orientation of the pier structure is a result of Title 31- Natural Resources and Conservation, Part 4-School Land Board, Chapter 155 - Land Resources, Subchapter A -Coastal Public Lands, Rule 155.9 Special Bay Area Guidelines-Clear Lake, Section (m) subsection (2b) of the Texas Administrative Code (The Code), which states that under no circumstances shall a pier or dock extend into the lake from a point on the shore less than 10 feet from the adjacent littoral owner's property line unless it is to be jointly used by both littoral owners. Additionally, Section (f) of The Code was also incorporated into the design and addresses design requirements and states that a pier or dock shall be designed to extend into and over coastal public lands and waters following a line projected perpendicular to the line of the shore unless such a design would obstruct navigation or would unreasonably interfere with the use or enjoyment of the adjoining littoral owner's lake front. The proposed pier is intended for exclusive day use by residents. Therefore, there will be no permanent boat storage within this pier structure.

The wave attenuation barrier was modified from three separate structures to a single structure. However, this structure is no longer connected to the existing bulkhead as originally proposed. This barrier is separated from the existing bulkhead by a 10-foot gap that will allow water movement along the shoreline and prevent the accumulation of any trash in the area.

As proposed in the initial public notice, the applicant proposes to discharge 65 cubic yards of concrete riprap along 155 linear feet of the existing concrete bulkhead to provide erosion protection. The discharge of riprap will result in 0.04 acre of impact to open water. Specifically, the applicant will clean, sort and break apart the existing riprap, redeposit the riprap, and supplement if necessary. CCC Project No.: 07-0254-F1; Type of Application: U.S.A.C.E. permit application #SWG-2006-2545 (Rev.) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Davis Petroleum Corporation; Location: The project is located in Galveston Bay State Tracts (STs) 198 and 199 in Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Smith Point, Texas. Approximate UTM Coordinates in NAD 27 (meters) in Zone 15; are: Beginning of pipeline: Easting: 327635; Northing: 3268169. End of pipeline: Easting: 324839; Northing: 3269053. Project Description: Davis Petroleum Corporation requests authorization to lay and maintain a pipeline up to 6 inches in diameter from ST 199 Well Number 1 to a point on shore at Smith Point, Texas. The specific location of the well is at X=3,332,746 and Y=664,592 S.C. Zone NAD 27. The point on the shore is located at X=3,341,988 and Y=642,250. The proposed pipeline will be bored from said point on shore under Oyster Lease No. 412 approximately 4,648 feet to X=3,337,605 and Y=643,798. CCC Project No.: 07-0255-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-469 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200703348
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: August 1, 2007

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Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapters 403, 2305; §2305.031 and §2305.032; and Chapter 2254, Subchapter A, Texas Government Code, the Comptroller of Public Accounts (Comptroller), State Energy Conservation Office (SECO) announces the issuance of its Request for Proposals (RFP #180b) for energy engineering services from qualified independent firms and qualified energy engineers, to provide energy engineering services for the LoanSTAR Revolving Loan Program (Program). Successful Respondent(s) will be asked to assist Comptroller in performing energy engineering services and assist in conducting monitoring activities required by the Program. Successful Respondent(s)

will be expected to begin performance of any contract(s) resulting from this RFP on or about September 15, 2007.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. The RFP will be available for pick-up at the above-referenced address on Friday, August 10, 2007, after 10:00 a.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller also plans to place the RFP on the Electronic State Business Daily after Friday, August 10, 2007, 10:00 a.m. (CZT). All written inquiries and Non-Mandatory Letters of Intent must be received at the above-referenced address no later than 2:00 p.m. (CZT) on Friday, August 17, 2007. Non-Mandatory Letters of Intent must be addressed to William Clay Harris, Assistant General Counsel, Contracts, and must be signed by an authorized representative of each entity. All responses to questions will be posted electronically on Friday, August 31, 2007, on the Electronic State Business Daily at: http://esbd.tbpc.state.tx.us. Prospective respondents are encouraged to fax the Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. Non-Mandatory Letters of Intent and Questions received after the deadline will not be considered.

Closing Date: Proposals must be received in the Assistant General Counsel, Contracts Office at the location specified above (ROOM G-24) no later than 2:00 p.m. (CZT), on Friday, September 7, 2007. Proposals received after this time and proposals submitted by facsimile will not be considered; respondents shall be solely responsible for verifying timely receipt of proposals and all required copies in the Issuing Office by the deadline.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision. Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal obligation to execute any contracts on the basis of this notice or the distribution of any RFP. Comptroller shall pay for no costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - Friday, August 10, 2007, 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Due - Friday, August 17, 2007, 2:00 p.m. CZT; Posting of Official Responses to Questions - Friday, August 31, 2007; Proposals Due - Friday, September 7, 2007, 2:00 p.m. CZT; Contract Execution - September 15, 2007, or as soon thereafter as practical; Commencement of Project Activities - September 15, 2007, or as soon thereafter as practical.

TRD-200703354
Pamela G. Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: August 1, 2007

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/06/07 - 08/12/07 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/06/07 - 08/12/07 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment, or other similar purpose.

TRD-200703334
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: July 31, 2007

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Texas Education Agency

Request for Applications Concerning Communities in Schools Startup Grant Program, RFA #701-07-120

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-07-120 for the Communities In Schools (CIS) Startup Grant Program from local educational agencies (LEAs) including public school districts, open-enrollment charter schools, and regional education service centers; community-based organizations; and other public, private, or nonprofit entities. Examples of agencies and organizations eligible under the CIS program include, but are not limited to, non-profit agencies, city or county government agencies, faith-based organizations, or institutions of higher education. The CIS program established by the startup organization must be developed as a non-profit organization under the Internal Revenue Code, §501(c)(3).

Description. The purpose of the Communities In Schools Startup Grant Program is to solicit grant applications for the establishment of a CIS program in one of four education service center regions currently not served by a CIS program: Amarillo (Region 16), San Angelo (Region 15), East Texas Nacogdoches-Lufkin area (Region 7), or the border area near Del Rio-Eagle Pass (Regions 15 and 20). The grantee will serve as the fiscal agent, assist in the establishment of a 501(c)(3) non-profit CIS board, and provide oversight to the board in the development of a fully operational CIS program. The grantee will be responsible for ensuring the completion of the following four specific program establishment objectives: the development of a CIS board; the development and implementation of the CIS program requirements; the delivery of services to identified school districts; and the completion of necessary paperwork to finish the service delivery and renewal process. Applicants must demonstrate the capacity to carry out these objectives in the application.

Dates of Project. Applicants should plan for a starting date of no earlier than November 1, 2007, and an ending date of no later than August 31, 2008.

Project Amount. Approximately $300,000 is available for funding one grant. The grant request may not be greater than $300,000. This project is funded 100 percent by Communities In Schools funds authorized by the Texas legislature.

Selection Criteria. Applications will be selected based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant program and the extent to which the application addresses the primary objective(s) and intent of the project. Applications must address each statutory requirement as specified in the RFA and receive a basic average score of greater than 70 percent of the total points to be considered for funding. The TEA reserves the right to select from the highest rank-

ing applications those that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Applicant's Conference. Prospective applicants will be provided an opportunity to receive general and clarifying information from TEA about the scope of the Communities In Schools Startup Grant Program on Thursday, August 30, 2007, from 1:00 p.m. until 3:00 p.m. on the Texas Educational Telecommunication Network (TETN) available at each regional education service center. The conference will be videotaped. Pre-conference questions may be sent to vicki.logan@tea.state.tx.us prior to August 30, 2007. Each person attending a TETN session will be required to sign a register setting out the representative's name and the name, address, and telephone number of the applicant organization represented. Prospective applicants who are not able to attend the Applicant's Conference may request a copy of the videotape at no charge from the TEA Division of Discretionary Grants using the contact information listed in the "Requesting the Application" section of this notice.

Requesting the Application. A complete copy of RFA #701-07-120 may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701; by calling (512) 463-9269; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number, including area code. The announcement letter and complete RFA will also be posted on the TEA website at http://burleson.tea.state.tx.us/GrantOpportunities/forms/ for viewing and downloading.

Further Information. For clarifying information about the RFA, contact Vicki Logan, Division of Discretionary Grants, Texas Education Agency, by phone at (512) 475-4468 or by e-mail at vicki.logan@tea.state.tx.us. In order to ensure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any information that is different from or in addition to information provided in the RFA or at the Applicant's Conference will be provided only in response to written inquiries. Copies of all such inquiries and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at http://burleson.tea.state.tx.us/GrantOpportunities/forms/.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Thursday, September 20, 2007, to be eligible to be considered for funding.

TRD-200703361
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: August 1, 2007

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Request for Applications Concerning Public Senior College/University Open-Enrollment Charter Guidelines and Application

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-07-117 from eligible entities to operate open-enrollment charter schools. Eligible entities are limited to Texas public senior colleges and universities.

Description. The purpose of an open-enrollment charter is to provide an alternative avenue for restructuring schools. An open-enrollment charter school offers flexibility and choice for educators, parents, and students. A public senior college or university open-enrollment charter school may operate on the campus of the public senior college or university or in the same county in which the campus of the public senior college or university is located.

An open-enrollment charter school will provide instruction to students at one or more elementary or secondary grade level(s) as provided by the charter. A charter school must be non-sectarian in its programs, admissions, policies, employment practices, and all other operations, and may not be affiliated with a sectarian school or religious institution. It is governed under the specifications of the charter and retains authority to operate for the term of the charter contingent on satisfactory student performance as defined by the state accountability system. An open-enrollment charter school does not have the authority to impose taxes.

An open-enrollment charter school is subject to federal laws and certain state laws governing public schools, including laws and rules relating to a criminal offense, requirements relating to the Public Education Information Management System, criminal history records, high school graduation, special education programs, bilingual education, prekindergarten programs, extracurricular activities, health and safety provisions, and public school accountability. As stated in the Texas Education Code (TEC), §12.156, in matters related to operation of an open-enrollment charter school, an open-enrollment charter school is immune from liability to the same extent as a school district, and its employees and volunteers are immune from liability to the same extent as school district employees and volunteers. A member of the governing body of an open-enrollment charter school or of a charter holder is immune from liability to the same extent as a school district trustee. An employee of an open-enrollment charter school who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system to the same extent a qualified employee of a school district is covered.

Dates of Project. Completed applications can be received by the TEA Document Control Center at 1701 North Congress Avenue, Austin, Texas, 78701-1494, Room 6-108, at any time.

Project Amount. TEC, §12.106(a), states that a charter holder is entitled to receive funding for the open-enrollment charter school under Chapter 42 as if the school were a school district without a tier one local share for purposes of §42.253 and without any local revenue for purposes of §42.302. In determining funding for an open-enrollment charter school, adjustments under §§42.102, 42.103, 42.104, and 42.105 and the district enrichment tax rate under §42.302 are based on the average adjustment and average district enrichment tax rate for the state. TEC, §12.106(b), states that an open-enrollment charter school is entitled to funds that are available to school districts from the agency or the commissioner in the form of grants or other discretionary funding unless the statute authorizing the funding explicitly provides that open-enrollment charter schools are not entitled to the funding. An open-enrollment charter school may not charge tuition and must admit students based on a lottery if more students apply for admission than can be accommodated. An open-enrollment charter school must prohibit discrimination in admission policy on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend. However, a charter school that specializes in the performing arts may require a student to demonstrate artistic ability and may require an applicant to audition. To be eligible for certain federal funding, the charter must admit students

on the basis of a lottery if more students apply than can be admitted. The charter may provide for the exclusion of a student who has a documented history of a criminal offense, a juvenile court adjudication, or a discipline problem under TEC, Chapter 37, Subchapter A.

Selection Criteria. A complete description of selection criteria is included in the RFA.

The State Board of Education (SBOE) may approve open-enrollment charter schools as provided in TEC, §12.101 and §12.152. There is a cap of 215 charters approved under TEC, §12.101, and no cap on the number of charters approved under TEC, §12.152.

The SBOE will consider Statements of Impact from any school district whose enrollment is likely to be affected by the open-enrollment charter school.

Requesting the Application. An application must be submitted under SBOE guidelines to be considered. A complete copy of the publication *Public Senior College/University Open-Enrollment Charter Guidelines and Application* (RFA #701-07-117), which includes an application and procedures, may be obtained by writing the Division of Charter Schools, Room 5-107, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, 78701-1494; by calling (512) 463-9575; or at http://www.tea.state.tx.us/charter/rfas/rfascharter.htm.

Further Information. For clarifying information about the public senior college/university open-enrollment charter school application, contact Mary Perry, Division of Charter Schools, Texas Education Agency, at (512) 463-9575 or mary.perry@tea.state.tx.us.

TRD-200703362
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: August 1, 2007

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 10, 2007**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 10, 2007**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: 3 Park's Enterprises, L.L.C. dba Lah Cleaners; DOCKET NUMBER: 2006-1669-DCL-E; IDENTIFIER: RN100919018; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning; RULE VIOLATED: 30 Texas Administrative Code (TAC) §337.11(e) and THSC, §374.102, by failing to renew the registration by completing and submitting the required registration form; PENALTY: $1,067; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Alicia Anguiano; DOCKET NUMBER: 2007-0640-AGR-E; IDENTIFIER: RN104963715; LOCATION: Erath County, Texas; TYPE OF FACILITY: animal feeding operation; RULE VIOLATED: 30 TAC §321.33(d), by failing to obtain authorization to expand an existing animal feeding operation; PENALTY: $950; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: City of Anna; DOCKET NUMBER: 2007-0347-MWD-E; IDENTIFIER: RN102754199; LOCATION: Collin County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number 12283001, Effluent Limitations and Monitoring Requirement No. 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limits; PENALTY: $14,193; Supplemental Environmental Project (SEP) offset amount of $14,193 applied to holding a one-day city-wide household hazardous waste collection and electronics and tire recycling event to include collection and proper disposal of household hazardous waste, used motor oil, filters, batteries, and tires, and recycling of electronics; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Ashish Food, Inc. dba Amigo Stop; DOCKET NUMBER: 2007-0718-PST-E; IDENTIFIER: RN101832954; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all underground storage tanks; 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to provide release detection by failing to conduct inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; and 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; PENALTY: $5,200; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Bluegrove Water Supply Corporation; DOCKET NUMBER: 2007-0706-PWS-E; IDENTIFIER: RN101206167; LOCATION: Clay County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(m)(1), by failing to inspect the system's pressure tank and ground storage tanks annually; 30 TAC §290.46(i), by failing to provide a plumbing ordinance or service agreement; 30 TAC §290.46(j), by failing to complete and maintain documentation of Customer Service Agreements or Customer Service

Inspection reports; 30 TAC §290.46(s)(1), by failing to calibrate well meters; 30 TAC §290.121(a), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan; 30 TAC §290.41(c)(1)(F), by failing to provide a sanitary control easement or an approved exception to the easement requirement; and 30 TAC §290.46(f), by failing to properly develop and maintain records of water works operation and maintenance activities; PENALTY: $1,260; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(6) COMPANY: City of Brackettville; DOCKET NUMBER: 2007-0389-PWS-E; IDENTIFIER: RN101387363; LOCATION: Brackettville, Kinney County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain sanitary control easements; 30 TAC §290.44(h), by failing to develop a backflow prevention program; 30 TAC §290.45(b)(1)(D)(iii) and THSC, §341.0315(c), by failing to provide two or more pumps with a total capacity of two gallons per minute (gpm) per connection; 30 TAC §290.45(b)(1)(D)(iv) and THSC, §341.0315(c), by failing to provide an elevated storage tank capacity of 100 gallons per connection; 30 TAC §290.46(f)(2), by failing to provide the public water system's operating records for review during inspections; 30 TAC §290.46(m)(1), by failing to annually inspect the ground and elevated storage tanks; 30 TAC §290.46(i) and (j), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer; and 30 TAC §290.121(a), by failing to maintain an up-to-date chemical and microbiological monitoring plan; PENALTY: $1,100; ENFORCEMENT COORDINATOR: Thomas Barnett, (713) 767-3500; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: Brookshire Municipal Water District; DOCKET NUMBER: 2007-0662-MWD-E; IDENTIFIER: RN101920312; LOCATION: Waller County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010001001, Effluent Limitations and Monitoring Requirements No. 1, and the Code, §26.121(a), by failing to comply with permitted effluent limitations; PENALTY: $2,410; Supplemental Environmental Project (SEP) offset amount of $1,928 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: ConocoPhillips Company; DOCKET NUMBER: 2006-0087-MLM-E; IDENTIFIER: RN102495884; LOCATION: Borger, Hutchinson County, Texas; TYPE OF FACILITY: petroleum refining and natural gas processing plant; RULE VIOLATED: 30 TAC §101.211(b)(1) and THSC, §382.085(b), by failing to include a complete list of pollutants in the final report; 30 TAC §116.715(a), TCEQ Flexible Air Permit Number 9868A, Special Condition 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions of sulfur dioxide; 30 TAC §116.715(a), TCEQ Flexible Air Permit Number 9868A, Special Condition 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions of nitric oxide, nitrogen dioxide, and carbon monoxide (CO); 30 TAC §116.715(a) and §101.20(1), TCEQ Flexible Air Permit Number 9868A, Special Condition 5.B., 40 Code of Federal Regulations (CFR) §60.18(c)(2), by failing to operate the flare with a pilot flame present at all times; 30 TAC §116.715(a), TCEQ Flexible Air Permit Number 9868A, Special Condition 5.D., and THSC, §382.085(b), by failing to ensure that the flow meter was operational; 30 TAC §116.715(a), TCEQ Flexible Air Permit Number 9868A, Special Condition 9, and THSC, §382.085(b), by failing to monthly sample the acid gas exiting the Unit 43 waste heat boilers for ammonia concentration; 30 TAC §116.715(a), TCEQ Flexible Air Permit Number 9868A, Special Condition 11, and THSC, §382.085(b), by failing to consistently maintain the required temperatures and oxygen concentrations; 30 TAC §116.715(a), TCEQ Flexible Air Permit Number 9868A, Special Condition 14, and THSC, §382.085(b), by failing to consistently maintain minimum flame temperature of 2,000 degrees Fahrenheit; 30 TAC §116.715(a), TCEQ Flexible Air Permit Number 9868A, Special Condition 20, and THSC, §382.085(b), by failing to maintain records of the caustic concentration of all waste gas streams containing hydrogen fluoride; 30 TAC §116.715(a), TCEQ Flexible Air Permit Number 9868A, Special Condition 26, and THSC, §382.085(b), by failing to consistently maintain the CO concentration below 500 parts per million volume; 30 TAC §116.715(a), TCEQ Flexible Air Permit Number 9868A, Special Condition 30, and THSC, §382.085(b), by failing to consistently maintain hydrogen sulfide concentration from fuel gas; 30 TAC §116.715(a), TCEQ Flexible Air Permit Number 9868A, Special Condition Number 37.D, and THSC, §382.085(b), by failing to annually inspect Tank 5550 for seal integrity verification; 30 TAC §116.715(a), TCEQ Flexible Air Permit Number 9868A, Special Condition 41.I., and THSC, §382.085(b), by failing to repair leaking valves during the unit shutdown; 30 TAC §116.715(a), TCEQ Flexible Air Permit Number 9868A, Special Condition 42.H., and THSC, §382.085(b), by failing to repair 13 valves; 30 TAC §116.715(a), TCEQ Flexible Air Permit Number 9868A, Special Condition 41.E., and THSC, §382.085(b), by failing to seal 22 open ended valves in volatile organic compound service; 30 TAC §116.715(a), TCEQ Flexible Air Permit Number 9868A, Special Condition 48, and THSC, §382.085(b), by failing to replace Engine 42 and 47 oxygen sensors during the third quarter of 2004; 30 TAC §116.715(a), TCEQ Flexible Air Permit Number 9868A, Special Condition 50, and THSC, §382.085(b), by failing to conduct stack testing; 30 TAC §116.715(a), TCEQ Flexible Air Permit Number 9868A, Special Condition 51.A., and THSC, §382.085(b), by failing to quarterly monitor the nitrogen oxide and CO content of engine exhaust; 30 TAC §116.715(a), TCEQ Flexible Air Permit Number 9868A, Special Condition 54, and THSC, §382.085(b), by failing to conduct quarterly grab sampling or spot checking with a portable analyzer; 30 TAC §116.715(a), TCEQ Flexible Air Permit Number 9868A, Special Condition 59, and THSC, §382.085(b), by failing to consistently maintain at least four operational electrostatic precipitator electrical cabinets; 30 TAC §116.715(a), TCEQ Flexible Air Permit Number 9868A, Special Condition 8, and THSC, §382.085(b), by failing to operate the S Zorb Unit at or below the maximum sulfur removal rate of 128 pounds per hour; 30 TAC §116.715(a), TCEQ Flexible Air Permit Number 9868A, Special Condition 14, and THSC, §382.085(b), by failing to maintain the Charge Heater firing rate limit at or below 14.3 million British thermal units per hour; 30 TAC §122.143(4) and §122.145(2)(A), TCEQ Federal Operating Permit Number O-01440, General Terms and Conditions, and THSC, §382.085(b), by failing to include all deviations on the semi-annual deviation report; 30 TAC §21.4 and §101.27(c)(1) and the Code, §5.702, by failing to pay air emissions fees, consolidated water quality fees, and associated late fees; and 30 TAC §335.2(b) and §335.4(1) and 40 CFR §268.35 and §270.1, by disposing of a listed hazardous waste into an unauthorized landfill; PENALTY: $200,508; Supplemental Environmental Project (SEP) offset amount of $80,203 applied to Borger ISD LEEDS Green School Building Project; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(9) COMPANY: James A. Dyche dba Crest Water Company; DOCKET NUMBER: 2007-0547-PWS-E; IDENTIFIER: RN101192540, RN101251023, RN101220887; LOCATION: Johnson County, Texas; TYPE OF FACILITY: public water supply systems; RULE VI-

OLATED: 30 TAC §290.46(n)(3), by failing to maintain records as required; 30 TAC §290.41(c)(1)(F), by failing to make available sanitary control easements; 30 TAC §290.43(c), (c)(2), (c)(5), (c)(6), (c)(7), and (c)(8), by failing to cover and design, fabricate, erect, test, and disinfect all potable water storage facilities; 30 TAC §290.45(b)(1)(C)(i) and THSC, §341.0315(c), by failing to provide a minimum well production capacity of at least 0.6 gpm per connection; and 30 TAC §290.41(c)(3)(B), by failing to provide Well Number 1 with a casing 18 inches above the elevation of the finished floor of the pump house or natural ground surface with a minimum of one inch above the sealing block or pump motor foundation block; PENALTY: $1,749; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Diamond Shamrock Refining Company, L.P.; DOCKET NUMBER: 2007-0676-AIR-E; IDENTIFIER: RN100210517; LOCATION: Moore County, Texas; TYPE OF FACILITY: petroleum refining plant; RULE VIOLATED: 30 TAC §101.201(a)(2) and THSC, §382.085(b), by failing to include all facility common names in the initial notification and final emissions event report; 30 TAC §101.20(3) and §116.715(a) , Flexible Permit Number 9708/PSD-TX-861M2, Application Representations, Table F-2 and Special Condition 9B, 40 CFR §60.18(c)(2), and THSC, §382.085(b), by failing to prevent unauthorized emissions and to operate a flare; 30 TAC §101.20(3) and §116.715(a), Flexible Permit Number 9708/PSD-TX-861M2, Application Representations, Table F-2, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(2) and (b)(1) and THSC, §382.085(b), by failing to include all required information in the initial and final emissions reports; PENALTY: $30,826; Supplemental Environmental Project (SEP) offset amount of $12,330 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Unauthorized Trash Dump Clean-Up; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(11) COMPANY: Priten Patel dba Easy Stop; DOCKET NUMBER: 2007-1109-PST-E; IDENTIFIER: RN102047313; LOCATION: Crosbyton, Crosby County, Texas; TYPE OF FACILITY: convenience store with retail gasoline sales; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: $875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(12) COMPANY: Enbridge G & P (North Texas) L.P.; DOCKET NUMBER: 2007-0873-AIR-E; IDENTIFIER: RN102888377; LOCATION: Jack County, Texas; TYPE OF FACILITY: natural gas processing plant; RULE VIOLATED: 30 TAC §116.615(2), TCEQ Standard Permit Number 76462, General Operating Permit Number 514, Condition Number b(7)(E)(ii), and THSC, §382.085(b), by failing to comply with the CO maximum allowable emission rate; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(13) COMPANY: Fort Bend County Municipal Utility District No. 142; DOCKET NUMBER: 2007-0685-MWD-E; IDENTIFIER: RN102977287; LOCATION: Fort Bend County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0014408001, Interim 1 Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limits; PENALTY: $1,740; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Fort Bend Oil Corporation dba Handi Plus 369; DOCKET NUMBER: 2006-1526-PST-E; IDENTIFIER: RN101435485; LOCATION: Fort Bend County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), by failing to provide release detection; PENALTY: $1,750; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Galileo Mount Houston TX LP dba Mount Houston Utilities; DOCKET NUMBER: 2007-0648-MWD-E; IDENTIFIER: RN102336526; LOCATION: Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 14144001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations; PENALTY: $5,310; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: Hartley County; DOCKET NUMBER: 2006-0999-MLM-E; IDENTIFIER: RN102215324; LOCATION: near Channing, Oldham County, Texas; TYPE OF FACILITY: type IV Arid Exempt municipal solid waste (MSW) landfill; RULE VIOLATED: 30 TAC §§330.125(a) and (e), 330.133(f), 330.135, and 335.586(d) and (e), by failing to maintain a copy of the MSW permit, personnel training records, written procedures for the removal of any putrescible waste and any other prohibited waste; 30 TAC §330.129, by failing to maintain a source of earthen material in such a manner that it is available at all times to extinguish any fires; 30 TAC §330.133(a), (b), and (e), by failing to have a trained staff member at the facility during hours of operation to monitor all incoming loads of waste and failing to control the unloading of waste in unauthorized areas; 30 TAC §330.137, by failing to provide required information on the facility's signage; 30 TAC §330.15(d), by failing to prevent open burning of solid waste; 30 TAC §330.165(d) and (h), by failing to apply weekly cover to the active portion of the landfill and maintain a cover log; 30 TAC §30.201(b), by failing to have at least one individual licensed to operate a MSW facility; 30 TAC §330.63(d)(4), by failing to include all of the required landfill unit specifications in the facility's site development plan; and 30 TAC §330.127, by failing to develop an adequate site operating plan for the facility; PENALTY: $14,280; Supplemental Environmental Project (SEP) offset amount of $11,424 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Michael Limos, (512) 239-5839; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(17) COMPANY: Chung Nguyen dba Hilltop Village Mobile Home Park; DOCKET NUMBER: 2007-0612-MWD-E; IDENTIFIER: RN104845029; LOCATION: Belton, Bell County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: the Code, §26.121, by failing to obtain proper authorization for the treatment and disposal of wastewater; PENALTY: $6,300; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Houston Refining LP; DOCKET NUMBER: 2007-0713-AIR-E; IDENTIFIER: RN100218130; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: refinery; RULE VIOLATED: 30 TAC §116.715(a), Permit Number 2167, Special Condition Number 1, and THSC, §382.085(b), by failing

to prevent unauthorized emissions; 30 TAC §101.201(a)(1) and THSC, §382.085(b), by failing to submit the initial notification for the April 21, 2007 emissions event; PENALTY: $20,453; Supplemental Environmental Project (SEP) offset amount of $10,226 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: John Muennink, (316) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: I. 35 Sandpit, Inc.; DOCKET NUMBER: 2007-0237-MLM-E; IDENTIFIER: RN102869484; LOCATION: Alvarado, Johnson County, Texas; TYPE OF FACILITY: sand mining and wood recycling operation; RULE VIOLATED: 30 TAC §106.149(5) and THSC, §382.085(b), by failing to ensure that all in-plant roads are paved and cleaned or sprinkled with water and/or chemicals necessary to control dust emissions; 30 TAC §330.7(a), by failing to obtain authorization for the storage and/or processing of MSW; 30 TAC §328.5(d), by failing to establish and maintain financial assurance for the closure of a recycling facility that stores combustible materials outdoors; and 30 TAC §111.201 and THSC, §382.085(b), by failing to comply with the general prohibition on outdoor burning; PENALTY: $8,560; ENFORCEMENT COORDINATOR: Marlin Bullard, (254) 751-0335; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Lilbert-Looneyville Water Supply Corporation; DOCKET NUMBER: 2007-0480-PWS-E; IDENTIFIER: RN101187433; LOCATION: Nacogdoches County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(D), by failing to prevent livestock from being within 50 feet of water supply wells; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices; 30 TAC §290.44(h)(1)(B)(i), by failing to have backflow prevention assemblies tested and certified to be operating within specifications; 30 TAC §290.46(m)(1)(B), by failing to inspect the interior surface of the pressure tank; 30 TAC §290.43(c)(3), by failing to provide the ground storage tank with an overflow pipe flap valve assembly; 30 TAC §290.121(a), by failing to maintain an up-to-date chemical and microbiological monitoring plan; 30 TAC §290.41(c)(3)(M), by failing to provide a suitable sampling cock on the discharge pipe of each well pump; 30 TAC §290.45(b)(1)(C)(iii) and THSC, §341.0315(c), by failing to provide two or more pumps having a total capacity of two gpm per connection; and 30 TAC §290.41(c)(1)(F), by failing to provide a sanitary control easement or an approved exception to the easement requirement; PENALTY: $3,437; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(21) COMPANY: James Lynch; DOCKET NUMBER: 2007-0643-MSW-E; IDENTIFIER: RN105002828; LOCATION: Hudspeth County, Texas; TYPE OF FACILITY: unauthorized disposal site; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the disposal of MSW at an unauthorized facility; PENALTY: $1,050; ENFORCEMENT COORDINATOR: Dana Shuler, (512) 239-2505; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(22) COMPANY: Lyondell Chemical Company; DOCKET NUMBER: 2007-0583-AIR-E; IDENTIFIER: RN102523107; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), TCEQ Air Permit Number 9395, Special Condition Number 8, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $5,525; Supplemental Environmental Project (SEP) offset amount of $2,210 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: Magnum Blue Ribbon Feeds, Inc.; DOCKET NUMBER: 2007-0680-AIR-E; IDENTIFIER: RN101925196; LOCATION: Deaf Smith County, Texas; TYPE OF FACILITY: cattle feed supplement production; RULE VIOLATED: 30 TAC §106.147(a)(1)(B) and §111.111(a)(1)(B) and THSC, §382.085(b), by failing to comply with the state wide opacity limit of 20% and permit by rule registration number 37018 opacity limit of 5%; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Sandy VanCleave, (512) 239-2670; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(24) COMPANY: Mallard Point WWTP, LLC; DOCKET NUMBER: 2007-0445-MWD-E; IDENTIFIER: RN102342722; LOCATION: Hunt County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Permit Number WQ0014215001, Effluent Limits and Monitoring Requirements 1 and 6, and the Code, §26.121(a), by failing to comply with permit effluent limits; and 30 TAC §305.125(1) and Permit Number WQ0014215001, Reporting Requirements, by failing to submit monitoring results at the intervals specified in the permit; PENALTY: $4,800; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: Nalle Custom Homes, Inc.; DOCKET NUMBER: 2007-0914-WQ-E; IDENTIFIER: RN105229702; LOCATION: Smithville, Bastrop County, Texas; TYPE OF FACILITY: construction site for a single family housing development; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activity; PENALTY: $750; ENFORCEMENT COORDINATOR: Heather Brister, (512) 239-1203; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(26) COMPANY: Paul's Oil Station, LTD dba Paul's Oil Station; DOCKET NUMBER: 2007-1127-PST-E; IDENTIFIER: RN101538239; LOCATION: Rowlett, Dallas County, Texas; TYPE OF FACILITY: automotive maintenance; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to maintain financial assurance; PENALTY: $700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: Petrus Adrianus Boekhorst dba Petal Dairy; DOCKET NUMBER: 2007-0625-AGR-E; IDENTIFIER: RN101716298; LOCATION: Hopkins County, Texas; TYPE OF FACILITY: dairy operation; RULE VIOLATED: 30 TAC §321.31(a), General Permit Number TXG920000, Part III A.11.(d)(1), and the Code, §26.121(a), by failing to prevent unauthorized discharges; 30 TAC §321.38(b)(3) and General Permit Number TXG920000, Part III A.4.(c)(1)(iii), by failing to locate a holding pen at least 100 feet from a water well used for agriculture irrigation; 30 TAC §321.38(e)(2) and General Permit Number TXG920000, Part III A.6.(a)(1), by failing to obtain certification by a licensed Texas professional engineer for the design specifications and construction of a new retention control structure; and 30 TAC §321.36(1) and General Permit Number TXG920000, Part III A.10.(c), by failing to collect and properly dispose of cattle carcasses; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(28) COMPANY: Quick & Convenience Pro-Victoria 1 LLC dba Midway Truck Stop; DOCKET NUMBER: 2007-1110-PST-E; IDENTI-

FIER: RN101261535; LOCATION: Victoria County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: $875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825 3100.

(29) COMPANY: Sheema Enterprise, Inc. dba Highway 59 Phillips 66; DOCKET NUMBER: 2007-0610-PST-E; IDENTIFIER: RN100697564; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(4) and (6) and THSC, §382.085(b), by failing to maintain Stage II records and make them immediately available for review; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: $3,675; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: Spring Creek Utility District; DOCKET NUMBER: 2007-0860-MWD-E; IDENTIFIER: RN101514792; LOCATION: Montgomery County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(17) and TPDES Permit Number 11574001, Sludge Provisions, by failing to timely submit the annual sludge report; 30 TAC §317.6(b)(1)(C), by failing to provide a scale for determining the amount of chlorine used as well as the amount remaining in the container; and 30 TAC §305.125(1) and TPDES Permit Number 11574001, Monitoring and Reporting Requirements Number 7.c., by failing to submit noncompliance notifications for effluent violations more than 40% above the permitted limitation; PENALTY: $3,770; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(31) COMPANY: Swift Beef Company; DOCKET NUMBER: 2007-0906-AIR-E; IDENTIFIER: RN101623015; LOCATION: Cactus, Moore, and Sherman Counties, Texas; TYPE OF FACILITY: beef processing; RULE VIOLATED: 30 TAC §101.4 and THSC, §382.085(a) and (b), by failing to take necessary measures to prevent the release of odors; PENALTY: $1,050; ENFORCEMENT COORDINATOR: Dana Shuler, (512) 239-2505; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(32) COMPANY: The Goodyear Tire & Rubber Company; DOCKET NUMBER: 2007-0562-AIR-E; IDENTIFIER: RN102561925; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: rubber manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Federal Operating Permit (FOP) Number 1593, General Terms and Conditions and Special Terms and Condition 12, Air Permit Number 22110, Special Condition 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $6,450; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3837; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(33) COMPANY: The Premcor Refining Group Inc.; DOCKET NUMBER: 2007-0385-AIR-E; IDENTIFIER: RN102584026; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §§101.20(3), 116.715(a) and (c)(7), 122.143(4), FOP O-02229, General Terms and Conditions, Special Terms and Conditions 15A, New Source Review Flexible Permit 6825A/PSD-TX-49, Special Condition 5A, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §§101.20(1) and (3), 113.780, 116.715(a) and (c)(7), 40 CFR §60.104(a)(2)(i) and §63.1568(a)(1), New Source Review Flexible Permit 6825A/PSD-TX-49, Special Conditions 1A and 3B, and THSC, §382.085(B), by failing to prevent unauthorized emissions and to prevent the discharge of sulfur dioxide; PENALTY: $56,166; Supplemental Environmental Project (SEP) offset amount of $28,083 applied to South East Texas Regional Planning Commission-West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Jessica Rhodes, (512) 239-2879; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(34) COMPANY: Darryl C. Winstead; DOCKET NUMBER: 2007-1111-WOC-E; IDENTIFIER: RN103719506; LOCATION: Travis County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(35) COMPANY: Young Men's Christian Association of the Greater Houston Area; DOCKET NUMBER: 2007-0661-MWD-E; IDENTIFIER: RN101279412; LOCATION: Trinity County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11644001, Final Effluent Limitations and Monitoring Requirements Numbers 1 and 2 for Outfall 001A, and the Code, §26.121(a), by failing to comply with the permitted effluent limits; and 30 TAC §305.125(1) and TPDES Permit Number 11644001, Monitoring and Reporting Requirements Number 1 for Outfall 001A, by failing to submit the parameter data on the discharge monitoring report for the pH daily maximum; PENALTY: $7,700; Supplemental Environmental Project (SEP) offset amount of $6,160 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")-Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Cari-Michel La-Caille, (512) 239-1387; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-200703340
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 31, 2007

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Notice of Comment Period and Announcement of Public Meeting on Proposed Air Quality Standard Permit for Sawmills

The Texas Commission on Environmental Quality (TCEQ) is providing an opportunity for public comment and will conduct a public meeting to receive testimony concerning the sawmill standard air permit proposed for issuance under the Texas Clean Air Act, Texas Health and Safety Code, §382.05195, Standard Permit, and Title 30, Texas Administrative Code (TAC), Chapter 116, Subchapter F, Standard Permits.

PROPOSED STANDARD PERMIT

The proposed new air quality standard permit for sawmills would replace the current permit by rule (PBR) for sawmills available under 30 TAC §106.223, Saw Mills. The usefulness of the PBR as an authorization method is limited by the lack of lumber drying provisions. The proposed standard permit would authorize lumber drying using a variety of methods that have been evaluated for protection of public health. All other activities common to sawmills were also evaluated for their effect on air quality standards and potential for nuisance resulting in required internal setbacks for equipment and stockpiles from the sawmill property line. The proposed standard permit also contains fire prevention requirements. In a separate commission action, 30 TAC §106.223

will be repealed and will be unavailable for use upon issuance of this standard permit.

The New Source Review Program under 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, requires any person who plans to construct any new facility or to engage in the modification of any existing facility which may emit air contaminants into the air of the state to obtain a permit in accordance with 30 TAC §116.111, General Application; satisfy the *de minimis* criteria of 30 TAC §116.119, De Minimis Facilities or Sources; or satisfy the conditions of a standard permit, a flexible permit, or a permit by rule before any actual work is begun on the facility. A standard permit authorizes the construction of new facilities or modification of existing facilities that are similar in terms of operations, processes, and emissions.

A standard permit is subject to the procedural requirements of 30 TAC §116.603, Public Participation in Issuance of Standard Permits, which includes a 30-day public comment period and a public meeting to provide an additional opportunity for public comment. Any person who may be affected by the emission of air pollutants from facilities that may be authorized under the standard permit is entitled to submit written or verbal comments regarding the proposed standard permit.

PUBLIC MEETING

A public meeting on the proposed standard permit for sawmills will be held in Austin, Texas. The meeting will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion with the audience will not occur during the meeting; however, TCEQ staff will be available to discuss the standard permit for sawmills 30 minutes prior to the meeting and will also answer questions after the meeting. The public meeting will be held on September 10, 2007, at 2:00 p.m., at the Texas Commission on Environmental Quality, Building C, Room 131E, 12100 Park 35 Circle, Austin.

PUBLIC COMMENT AND INFORMATION

Copies of the proposed standard permit for sawmills may be obtained from the TCEQ Web site at *http://www.tceq.state.tx.us/permitting/air/nav/standard.html* or by contacting the Texas Commission on Environmental Quality, Office of Permitting, Remediation, and Registration, Air Permits Division, at (512) 239-1250. Comments may be mailed to Mr. Beecher Cameron, Texas Commission on Environmental Quality, Office of Permitting, Remediation, and Registration, Air Permits Division, MC 163, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1070. All comments should reference the standard permit for sawmills. Comments must be received by 5:00 p.m. on September 17, 2007. To inquire about the submittal of comments or for further information, contact Mr. Cameron at (512) 239-1495. Si desea información en Español, puede llamar al (800) 687-4040.

Persons who have special communication or other accommodation needs who are planning to attend the public meeting should contact the TCEQ at (512) 239-1495. Requests should be made as far in advance as possible.

TRD-200703336
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: July 31, 2007

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 10, 2007**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 10, 2007**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Ricky D. Crawford; DOCKET NUMBER: 2005-1846-OSI-E; TCEQ ID NUMBER: RN103544268; LOCATION: 305 North Bridge, Brady, McCulloch County, Texas; TYPE OF FACILITIES: on-site sewage facilities; RULES VIOLATED: 30 TAC §285.61(4) and Texas Health and Safety Code, §366.051(c), by failing to obtain an authorization to construct before beginning the construction of an on-site sewage facility; PENALTY: $2,000; STAFF ATTORNEY: Dinniah Chahin, Litigation Division, MC 175, (512) 239-0617; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(2) COMPANY: Yaman, Inc. dba 7 am Food Store; DOCKET NUMBER: 2004-1799-PST-E; TCEQ ID NUMBER: RN101793479; LOCATION: 2728 Broadway Street, Galveston, Galveston County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b) by failing to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of underground storage tanks; PENALTY: $3,300; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street , Suite H, Houston, Texas 77023, (713) 767-3500.

TRD-200703342

Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 31, 2007

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 10, 2007**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 10, 2007**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: City of Venus; DOCKET NUMBER: 2002-1302-MLM-E; TCEQ ID NUMBERS: RN101612505 and RN102080686; LOCATION: approximately 0.5 miles northwest of the City of Venus at a point approximately 500 feet north of United States (U.S.) Highway 67 and approximately 200 feet west of Farm-to-Market (FM) Road 157, (Facility A), and adjacent to Grassy Creek, north of U.S. Highway 67 and east of FM Road 157, (Facility B) Venus, Johnson County, Texas; TYPE OF FACILITIES: 0.175 million gallon per day (mgd) activated sludge Wastewater Plant Number 2, and 0.15 mgd activated sludge Wastewater Plant No. 3; RULES VIOLATED: 30 TAC §305.125(1) and (5); and Texas Water Code (TWC), §26.121(a), by failing to maintain permitted effluent limits and to ensure the treatment unit and all its components were properly operated and maintained in violation of Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10883-001, Final Effluent Limitations and Monitoring Requirement Number 1, Permit Conditions Numbers 2(a) and 2(b), and Operational Requirement Number 1; 30 TAC §305.125(1) and (4); and TWC, §26.121(a), by failing to prevent unauthorized discharges from the treatment plant in violation of TPDES Permit Number 10883-001, Final Effluent Limitations and Monitoring Requirements Number 1, Permit Conditions Numbers 2(a), 2(b), 2(d), and 2(g); 30 TAC §305.125(1) and (4); and TWC, §26.121(a), by failing to prevent unauthorized discharges from the collection system in violation of TPDES Permit Number 10883-001, Final Effluent Limitations and Monitoring Requirement Number 1 and Permit Conditions Numbers 2(a) and 2(b); 30 TAC §305.125(1), (4), and (5); and TWC, §26.121(a), by failing to maintain permitted effluent limits and to ensure the treatment unit and all its components were properly operated and maintained in violation of TPDES Permit Number 10883-002, Final Effluent Limitations and Monitoring Requirement Number 1, Permit Conditions Number 2(a) and 2(b), and Operational Requirement Number 1; 30 TAC §319.11(a) and (b) and §305.125(1), by failing to conduct representative sampling in violation of TPDES Permit Number 10883-002, Monitoring and Reporting Requirements Number 2; 30 TAC §305.125(1) and (4); and TWC, §26.121(a), by failing to comply with permitted effluent limits, in violation of TPDES Permit Number 10883-002, Final Effluent Limitations and Monitoring Requirement Number 1, Permit Conditions Numbers 2(a) and 2(b); 30 TAC §305.125(1) and (9), by failing to submit complete noncompliance notifications in violation of TPDES Permit Number 10883-002, Monitoring and Reporting Requirements Number 7(a); and 30 TAC §305.125(1); and TWC, §26.121(a)l, by failing to prevent unauthorized discharges from the collection system in violation of TPDES Permit Number 10883-002, Final Effluent Limitations and Monitoring Requirement Number 1 and Permit Conditions Numbers 2(a), (b), (d), and (g); PENALTY: $17,620; Supplemental Environmental Project (SEP) offset amount of $17,620, applied to Texas Association of Resource Conservation Development; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Conners Construction, Inc.; DOCKET NUMBER: 2006-1852-AIR-E; TCEQ ID NUMBER: RN104416318; LOCATION: County Road 400, near the intersection of County Road 401, near Groesbeck, Limestone County, Texas; TYPE OF FACILITY: portable rock crusher; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.085(b) and §382.0518(a), by failing to obtain a permit or meet the conditions of a permit by rule; PENALTY: $10,000; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: DCP Midstream, LP; DOCKET NUMBER: 2006-0958-AIR-E; TCEQ ID NUMBER: RN100222330; LOCATION: three miles west of Goldsmith, Highway 158, Ector County, Texas; TYPE OF FACILITY: gas plant; RULES VIOLATED: 30 TAC §116.115(c), Air Permit Number 676A, Special Condition Number 1 and THSC, §382.085(b), by failing to prevent the unauthorized release of air contaminants into the atmosphere; 30 TAC §116.115(c), Air Permit Number 676A, Special Condition Number 2 and THSC, §382.085(b), by failing to maintain the sulfur recovery efficiency in the sulfur recovery unit of at least 98% based on a rolling seven-day average; 30 TAC §122.145(2)(A) and THSC, §382.085(b), by failing to submit complete and accurate deviation reports for the periods of January 1 and June 30, 2005, and July 1 and December 31, 2005; 30 TAC §101.20(1) and §116.115(c), 40 Code of Federal Regulation (CFR) §60.7(a), and Air Permit Number 676A, Special Condition Number 7, and THSC, §382.085(b), by failing to submit a startup and a construction notification for modifications to the amine treater unit during 2002 as required; 30 TAC §101.20(1) and 40 CFR §60.482 - 6(a)(1), and THSC, §382.085(b), by failing to plug, cap, or double-valve an unreported number of open ended volatile organic compound lines and valves; 30 TAC §122.121, and THSC, §382.085(b), by failing to revise federal operating Permit Number O-00804 to include one turbine, and two compressor engines (EPN Numbers TUR-B, 22R-1 and 29R-(2))

prior to the startup of the units; and 30 TAC §101.201(b)(1)(H), and THSC, §382.085(b), by failing to include the correct authorized emissions limits for Scheduled Maintenance Incident Number 77400, and for Emissions Event Incident Number 79882 for the residue compression flare; PENALTY: $42,848; SEP offset amount of $21,424, applied to the Texas Association of Resource Conservation & Development Areas, Inc.; STAFF ATTORNEY: Mary Hammer, Litigation Division, MC 175, (512) 239-2496; REGIONAL OFFICE: Midland Regional Office, 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

TRD-200703341
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 31, 2007

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Notice of Public Hearings on Proposed Revisions to 30 TAC Chapter 290

The Texas Commission on Environmental Quality will conduct a public hearing to receive testimony regarding proposed revisions to 30 TAC Chapter 290, Public Drinking Water, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement changes in Chapter 290, Public Drinking Water, to be consistent with changes in the federal rules adopted by the United States Environmental Protection Agency, including the Public Notification Rule, the Stage 2 Disinfectants and Disinfection Byproducts Rule, the Long Term 2 Enhanced Surface Water Treatment Rule, and the Ground Water Rule. This rulemaking would also propose amendments to Chapter 290 to reflect changes to Texas Health and Safety Code, §341.033(i). In addition, this rulemaking would include proposed changes to Chapter 290 to ensure consistency with the federal Total Coliforms (including fecal coliforms and E. *coli)* rule and the Disinfectants and Disinfection Byproducts rule. Finally, this proposed rulemaking would add to §290.38 the definition of "process control duties" which is proposed to be deleted from 30 TAC §30.387 in another commission rulemaking, Rule Project Number 2006-041-030-CE.

The commission will hold a public hearing on this proposal in Austin on August 30, 2007, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Patricia Durón, Office of Legal Services, at (512) 239-6087. Requests should be made as far in advance as possible.

Comments may be submitted to Patricia Durón, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www.5.tceq.state.tx.us.rules/ecomments.* File size restrictions may apply to comments submitted via the eComments system. All comments should reference Rule Project Number 2006-045-290-PR. The comment period closes September 10, 2007. Copies of the proposed rule can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html.* For further information, please contact Alicia Diehl, Water Supply Division, at (512) 239-1626.

TRD-200703332
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: July 30, 2007

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Notice of Water Quality Applications

The following notices were issued on July 26, 2007.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to TCEQ, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

BOLLINGER TEXAS CITY, L.P. which operates a marine vessel and barge manufacturing and repair facility, has applied for a new TPDES Permit No. WQ0004824000, to authorize to discharge of drydock water, pressure wash waters, slurry blast waters, ballast water, and hydrostatic test water from Drydocks Nos. 2, 4, and 5 on an intermittent and flow variable basis via Outfall 001; pressure wash waters, slurry blast waters, ballast water, and hydrostatic test water from customer vessels moored along the wetdock area on an intermittent and flow variable basis via Outfall 002; and treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day via Outfall 003. This application was submitted to the TCEQ on February 27, 2007. The facility is located at 2201 Dock Road, Dock 42 in the City of Texas City, Galveston County, Texas. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

CIRCLE T PROMOTIONS, LTD. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014678001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 4,000 gallons per day. The facility will be located 4.2 miles northwest of the City of Hamilton on the southwest side of State Highway 36 in Hamilton County, Texas.

EAST MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 3 has applied for a renewal of TPDES Permit No. 14379-001, which authorizes a discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The facility is located approximately 1,000 feet west of and 1,100 feet north of the intersection of Nichols Lane and Gene Campbell Boulevard in Montgomery County, Texas.

CITY OF GRAPEVINE has applied for a renewal of TPDES Permit No. WQ0010486002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 5,750,000,000 gallons per day. The facility is located immediately northwest of the intersection of North Scribner and Shady Brook Road in Grapevine in Tarrant County, Texas.

MARHABA PARTNERS LIMITED PARTNERSHIP has applied for a renewal of TPDES Permit No. WQ0014625001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The facility is located 350 feet west

of Lockwood Road, 3,850 feet south of the intersection of Beltway 8 Tollway and Lockwood Road in Harris County, Texas.

SAN JACINTO BARGE REPAIR, INC. which operates a facility which cleans and repairs dry cargo barges, has applied for a renewal of TPDES Permit No. WQ0003349000, which authorizes the discharge of wash water from steel/iron barge cleaning operations at a daily maximum flow not to exceed 32,000 gallons per day via Outfall 001; wash water from fertilizer/gypsum barge cleaning operations at a daily maximum flow not to exceed 20,000 gallons per day via Outfall 002; wash water from cement barge cleaning operations at a daily maximum flow not to exceed 10,000 gallons per day via Outfall 003; and wash water from general barge cleaning operations at a daily maximum flow not to exceed 10,000 gallons per day via Outfall 004. The facility is located on Crosby-Lynchburg Road and on the east bank of the San Jacinto River, approximately 0.5 of a mile north of the Interstate Highway 10 bridge over the San Jacinto River, Harris County, Texas.

SHERWIN ALUMINA, L.P. which operates Sherwin Alumina, has applied for a renewal of TPDES Permit No. WQ0004646000, which authorizes the discharge of storm water commingled with process wastewater, equipment/pad washdown water, and utility wastewaters on an intermittent and flow variable basis via Outfalls 001 and 002. The facility is located on the south side of State Highway 361, approximately two (2) miles southeast of the intersection of State Highway 361 and State Highway 35, San Patricio County, Texas. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

UPPER TRINITY REGIONAL WATER DISTRICT has applied for a renewal of TPDES Permit No. 10698-002, which authorizes the discharge of treated domestic wastewater effluent at an annual average flow not to exceed 1,700,000 gallons per day at Outfall 001 and an annual average flow not to exceed 4,000,000 gallons per day at Outfall 002. The facility is located on the south side of the Little Elm Creek branch of Lewisville Lake, approximately 3,000 feet northwest of the intersection of U.S. Highway 380 and Navo Road in Denton County, Texas.

VALERO REFINING - TEXAS, L.P. which operates a petroleum refining facility, has applied for a major amendment to TPDES Permit No. WQ0000449000 to authorize the discharge of treated process wastewater, PTU effluent, utility wastewater, hydrostatic test water, treated domestic wastewater, laboratory wastewater, and storm water daily average flow not to exceed 4,500,000 gallons per day via new Outfall 009 as an alternative discharge route to current Outfall 001; increase the daily maximum temperature limitation at Outfall 001 to 110 0F; authorize the discharge of PTU effluent, boiler blowdown, water softener, and steam condensate via existing Outfall 001; increase the daily average flow limitation at Outfall 001 to 4,500,000 gallons per day; increase the daily maximum flow limitation at Outfall 001 to 6,000,000; increase the effluent limitations for all limited parameters at Outfall 001 as allowed based on increases in wastewater flows and facility production; remove the effluent limitations for total zinc at Outfall 001; authorize the discharge of water softener and boiler blowdown on an intermittent and flow variable basis via existing Outfall 002; authorize the discharge of steam condensate, boiler blowdown, and Coker Unit storm water on an intermittent and flow variable basis via existing Outfall 004; and authorize the discharge of raw water clarifier water, steam condensate, water softener, boiler blowdown, gravity filter backwash, steam condensate, reverse osmosis reject water, and tank farm water on an intermittent and flow variable basis via existing Outfalls 006 and 007. The facility is located approximately 1600 feet northeast of the intersection of State Highway 519 and Loop 197 East in the City of Texas City, Galveston County, Texas.

VILLAS ON TRAVIS CONDOMINIUM OWNER'S ASSOCIATION P.O. Box 3485, Austin, Texas 78764, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of Permit No. WQ0011532001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 27,000 gallons per day via surface irrigation 3.94 acres of landscape land. The wastewater treatment facility and disposal site are located approximately 200 feet northwest of Farm-to-Market Road 620 at a point 1.8 miles west of Mansfield Dam and adjacent to Lake Travis in Travis County, Texas.

To view the complete issued notices, view the notices on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200703351
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 1, 2007

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Notice of Water Rights Applications

Notices issued July 27, 2007 through July 31, 2007.

APPLICATION NO 12203; Enbridge Pipelines (East Texas) L.P. , 1100 Louisiana, Suite 3300, Houston, Texas 77002 has applied for a temporary Water Use Permit to divert and use 21 acre-feet of water within a one year period from Village Creek, tributary of the Neches River, Neches River Basin for industrial purposes (hydrostatic testing) in Hardin County. The application and partial fees were received on April 19, 2007. Additional information and fees were received on June 25, 2007. The application was declared administratively complete and accepted for filing on July 9, 2007. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by August 16, 2007.

APPLICATION NO. 12204; Enbridge Pipelines (East Texas) L.P., 1100 Louisiana, Suite 3300, Houston, Texas 77002 has applied for a temporary Water Use Permit to divert and use 21 acre-feet of water within a one year period from the Neches River, Neches River Basin for industrial purposes (hydrostatic testing) in Hardin County. The application and partial fees were received on April 19, 2007. Additional information and fees were received on June 25, 2007. The application was declared administratively complete and accepted for filing on July 9, 2007. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by August 16, 2007.

APPLICATION NO. 12151; North Texas Municipal Water District (NTMWD or Applicant) P.O. Box 2408, Wylie, Texas 75098 has applied for a Water Use Permit to construct and maintain a reservoir, known as Lower Bois d'Arc Creek Reservoir, on Lower Bois d'Arc Creek, Red River Basin, Fannin County, Texas. Applicant requests authorization to divert and use water from the reservoir for municipal,

industrial, and agricultural purposes, including the right to use water within the reservoir for in-place recreational purposes. Applicant requests interbasin transfer authorization to use water from the reservoir within its service area in the Red, Sabine, and Trinity River Basins, and within Fannin County in the Sulphur River Basin. NTMWD's service area is currently located within the following counties: Collin, Dallas, Denton, Fannin, Hopkins, Hunt, Kaufman, Rains and Rockwall. Applicant requests authorization to use the bed and banks of Pilot Grove Creek and the East Fork Trinity River to transport water diverted from the reservoir for subsequent diversion and use from Lake Lavon. Applicant further seeks authorization to reuse return flows generated from the diversion and use of water from the proposed reservoir. Applicant indicates that diversions from the reservoir may overdraft the firm yield of the reservoir as part of a system operation with existing and future supplies. A total of three public meetings will be held in the Red, Sabine and Trinity River Basins. The application was received on December 29, 2006. Additional fees and information were received on March 21, 2007, and June 13, 2007. The application was declared administratively complete and filed with the Office of the Chief Clerk on June 26, 2007. The Texas Commission on Environmental Quality (TCEQ) will hold public meetings to receive comments on the application for a Water Use Permit filed by North Texas Municipal Water District. Public Meetings are to be held: Monday, September 10, 2007 at 7:00pm, Fletcher Warren Civic Center, 5501 Business Highway 69 South, Greenville, Texas 75402, Tuesday, September 11, 2007 at 7:00pm, Fannin County Multi-Purpose Complex, 700 FM 87, Bonham, Texas 75418, Thursday, September 13, 2007 at 7:00pm, McKinney High School Auditorium, 1400 Wilson Creek Parkway, McKinney, Texas 75071.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "I/we request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to TCEQ, Office of the Chief Clerk, MC 105, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200703352
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 1, 2007

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Department of State Health Services

Notice of Emergency Impoundment Order on Silver Creek Dental

Notice is hereby given that the Department of State Health Services (department) ordered all radiation producing machines located at Silver Creek Dental (unregistered), Pearland, be impounded and not transferred without written authorization by the department.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200703330
Lisa Hernandez
Deputy General Counsel
Department of State Health Services
Filed: July 30, 2007

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Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission announces its intent to submit Amendment 767, Transmittal Number TX 07-008, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective September 1, 2007.

The proposed amendment will increase the reimbursement for the dispensing expense component of the dispensing fee under the Vendor Drug Program. In the Vendor Drug Program, a pharmacist is reimbursed for dispensing prescriptions to Medicaid clients through a dispensing fee paid per prescription. The dispensing fee is defined through a formula which includes the drug ingredient cost, dispensing expense, inventory management fee, and a delivery fee. The dispensing expense provides payments to pharmacists for their overhead costs related to dispensing prescriptions. By increasing the dispensing expense to $7.50, the Vendor Drug Program is proposing a rate that will cover more of these overhead costs than under the current dispensing expense. The dispensing expense rate increase was directed by the Legislature under the 2008-09 General Appropriations Act (Article II, Special Provisions, Sections 57(a)(3)(i) and 57(a)(3)(ii)(f), H.B. 1, 80th Legislature, Regular Session, 2007).

The proposed amendment is estimated to result in an additional aggregate expenditure for federal fiscal year (FFY) 2007 of $5,637,875, of which $3,426,701 is federal funds and $2,211,174 is state general revenue. For FFY 2008, the estimated additional aggregate expenditure is $67,965,239, of which $41,159,749 is federal funds and $26,805,490 is state general revenue. For FFY 2009, the estimated additional aggregate expenditure is $70,959,123, with $42,873,502 in federal funds and $28,085,621 in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Jim Hollinger, Rate Analyst, Rate Analysis Department, by mail at the Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1175; by facsimile at (512) 491-1998; or by e-mail at james.hollinger@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200703244
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: July 26, 2007

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Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit Transmittal Number 07-021, Amendment Number 780, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed effective date of this amendment is September 1, 2007.

The proposed amendment will extend the time period for rebasing, or recalculating, the Standard Dollar Amount (SDA) to August 31, 2008. The exception will be that HHSC will partially rebase state-owned teaching hospital payment rates effective September 1, 2007, and ending August 31, 2008. The state-owned teaching hospital payment rates will be based upon State Fiscal Year (SFY) 2003 cost data inflated to SFY 2005 using a cost-of-living index and will be adjusted proportionately to available funds. The proposed amendment will also extend the time period for not applying a cost-of-living index to the SDA to August 31, 2008. This amendment is being submitted as required by the 2008-09 General Appropriations Act (Article II, Health and Human Services Commission, Rider 52, H.B. 1, 80th Legislature, Regular Session, 2007).

The proposed amendment will also change the categories of hospitals that are eligible to receive the greater of Diagnosis Related Group (DRG) or Tax Equity and Fiscal Responsibility Act (TEFRA) reimbursement based on cost settlement. The proposed amendment specifies that until HHSC implements a new reimbursement system for Fee-for-Service (FFS) and Primary Care Management (PCCM) inpatient services, hospitals that meet one of the following criteria as of September 1, 2007, are eligible to receive the greater of DRG or TEFRA reimbursement for FFS and PCCM services: (1) located in a county with 50,000 or fewer persons, (2) a Medicare-designated Rural Referral Center or Sole Community Hospital not located in a metropolitan statistical area, or (3) a Medicare-designated Critical Access Hospital. Hospitals reimbursed by cost settlement under TEFRA cost principles will not be subject to the TEFRA cap.

The proposed amendment is estimated to result in additional annual aggregate expenditures of $826,521 for the remainder of federal fiscal year (FFY) 2007 (September 1, 2007 through September 30, 2007), with approximately $502,359 in federal funds and approximately $324,162 in state general revenue. For FFY 2008, the proposed amendment is estimated to result in additional annual aggregate expenditures of $9,918,246, with approximately $6,006,490 in federal funds and approximately $3,911,756 in state general revenue. For FFY 2009, the proposed amendment is estimated to result in additional annual aggregate expenditures of $9,918,246 with approximately $5,992,604 in federal funds and approximately $3,925,642 in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Alisa Jacquet by mail at Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at alisa.jacquet@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200703343
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: July 31, 2007

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Public Notice

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 07-023, Amendment Number 782, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed effective date for this amendment is September 1, 2007.

The proposed amendment will adjust payment rates for the Nursing Facility Program as a result of the 2008 - 2009 General Appropriations Act (Article IX, Additional Contingency and Other Provisions, Section 19.82, House Bill 1, 80th Legislature, Regular Session, 2007), which appropriated general revenue funds for provider rate increases for the Nursing Facility Program. The Reimbursement Methodology will be modified to indicate that for the period beginning September 1, 2007 and ending August 31, 2008, NF payment rates will, on average, be equal to the payment rates in effect August 31, 2007 plus 3 percent.

The proposed amendment is estimated to result in additional annual aggregate expenditures of $5,986,173 for the remainder of federal fiscal year (FFY) 2007 (September 1, 2007, through September 30, 2007), with approximately $3,638,396 in federal funds and approximately $2,347,777 in state general revenue. For FFY 2008, the proposed amendment is estimated to result in additional annual aggregate expenditures of $65,847,900, with approximately $39,877,488 in federal funds and approximately $25,970,412 in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Pam McDonald by mail at Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1373; by facsimile at (512) 491-1998; or by e-mail at pam.mcdonald@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200703226
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: July 25, 2007

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by FRANK WINSTON CRUM INSURANCE, INC., a foreign fire and/or casualty company. The home office is in Clearwater, Florida.

Application to change the name of RELIANCE LIFE INSURANCE COMPANY to USAA DIRECT LIFE INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Wilmington, Delaware.

Application to the State of Texas by KS PLAN ADMINISTRATORS, LLC, to add the doing business as name KELSEYCARE ADVANTAGE, a domestic health maintenance organization (HMO). The home office is in Houston, Texas.

Application for admission to the State of Texas by SOUTHERN GUARANTY INSURANCE COMPANY OF GEORGIA, a foreign fire and/or casualty company. The home office is in Roswell, Georgia.

Application for admission to the State of Texas by FIREMAN'S INSURANCE COMPANY OF WASHINGTON, D.C., a foreign fire and/or casualty company. The home office is in Wilmington, Delaware.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200703358
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: August 1, 2007

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application to change the name of BERKLEY ADMINISTRATORS OF TEXAS, INC. to BERKLEY RISK ADMINISTRATORS COMPANY OF TEXAS, a DOMESTIC third party administrator. The home office is DALLAS, TEXAS.

Application to change the name of ACCESS ADMINISTRATORS, INC. to ACCESS ADMINISTRATORS, INC. (using the assumed name of FORESIGHT TPA, INC.), a DOMESTIC third party administrator. The home office is EL PASO, TEXAS.

Application of ACCENTURE INSURANCE SERVICES, LLC, a foreign third party administrator. The home office is WILMINGTON, DELAWARE.

Application of VALIC RETIREMENT SERVICES COMPANY, a domestic third party administrator. The home office is HOUSTON, TEXAS.

Application of LINKIA, LLC, a foreign third party administrator. The home office is BALTIMORE, MARYLAND.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200703353
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: August 1, 2007

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Legislative Budget Board

Notice of Request for Qualifications

The Legislative Budget Board (LBB) announces the issuance of a Request for Qualifications (RFQ #LBB 2007 SPR 1001) to pre-qualify vendors to assist the LBB in conducting a variety of reviews, evaluations, and analyses of educational, financial, and operational functions of selected Texas Independent School Districts.

Contact: The contact person for this RFQ is Bill Parr, Assistant Director, Legislative Budget Board, Robert E. Johnson Building, 5th Floor, 1501 N. Congress, Austin, Texas 78701, telephone number: (512) 463-1200; fax number: (512) 475-2902; e-mail address: bill.parr@lbb.state.tx.us. The complete RFQ is available electronically on the Texas Marketplace at: http://esbd.tbpc.state.tx.us and on the LBB website at http://www.lbb.state.tx.us.

Questions: All questions regarding the RFQ must be sent via fax to Bill Parr at (512) 475-2902, not later than 2:00 p.m. CZT, on August 7, 2007. Official responses to questions received by the foregoing deadline will be posted electronically on the Texas Marketplace and the LBB website no later than August 8, 2007 or as soon thereafter as practical.

Closing Date: Applications must be received in the issuing office at the address specified above no later than 2:00 p.m. CZT, on August 24, 2007. Applications received after this time and date will not be considered. Applicants shall be solely responsible for confirming the timely receipt of applications.

Application Evaluation and Approval Process: All applications will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFQ. The LBB will make the final decision regarding the pre-qualification of all applicants. The LBB reserves the right to reject any or all submitted applications.

The LBB is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of this RFQ. The LBB shall not pay for any costs incurred by any applicant in responding to this Notice or this RFQ.

The anticipated schedule of events is as follows:

Issuance of RFQ - July 26, 2007, after 10:00 a.m. CZT;

Questions Due - August 7, 2007, 2:00 p.m. CZT;

Official Responses to Questions Posted - August 8, 2007, or as soon thereafter as practical;

Applications Due - August 27, 2007, 2:00 p.m. CZT;

Oral Presentations - August 29, 2007 - September 7, 2007

Approval of Pre-qualified Applicants - September 14, 2007, or as soon thereafter as practical.

TRD-200703245
Bill Parr
Assistant Director
Legislative Budget Board
Filed: July 26, 2007

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Texas Department of Licensing and Regulation

Vacancies on Board of Boiler Rules

The Texas Department of Licensing and Regulation announces two vacancies on the Board of Boiler Rules established by Texas Health and Safety Code, Chapter 755. The pertinent rules may be found in 16 TAC §65.65. The purpose of the Board of Boiler Rules is to advise the Texas Commission of Licensing and Regulation in the adoption of definitions

and rules relating to the safe construction, installation, inspection, operating limits, alteration, and repair of boilers and their appurtenances.

The Board is composed of nine members appointed by the presiding officer of the Commission, with the Commission's approval. The Board consists of three members representing persons who own or use boilers in this state; three members representing companies that insure boilers in this state; one member representing boiler manufacturers or installers; one member representing organizations that repair or alter boilers in this state; and one member representing a labor union. Members serve staggered six-year terms, with the terms of three members expiring January 31 of each odd-numbered year. This announcement is for two positions: a manufacturer or installer of boilers in this state and a member representing a labor union.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone (512) 475-4765, FAX (512) 475-2874 or Email tamala.fletcher@license.state.tx.us. Applications may also be downloaded from the Department website at: www.license.state.tx.us.

Applicants may be asked to appear for an interview; however any required travel for an interview would be at the applicant's expense.

TRD-200703364
William H. Kuntz
Executive Director
Texas Department of Licensing and Regulation
Filed: August 1, 2007

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Vacancies on Towing and Storage Advisory Board

The Texas Department of Licensing and Regulation (Department) announces vacancies on the Towing and Storage Advisory Board established by Texas Occupations Code, Chapter 2308. The purpose of the Towing and Storage Advisory Board is to advise the Texas Commission of Licensing and Regulation and the Department on: technical matters relevant to the administration and enforcement of Chapter 2308, including examination content, licensing standards, and continuing education requirements.

The Board is composed of eight members appointed by the presiding officer of the Commission, with the Commission's approval. The advisory board consists of the following members: one representative of a towing company operating in a county with a population of less than one million; one representative of a towing company operating in a county with a population of one million or more; one owner of a vehicle storage facility located in a county with a population of less than one million; one owner of a vehicle storage facility located in a county with a population of one million or more; one parking facility owner; one law enforcement officer from a county with a population of less than one million; one law enforcement officer from a county with a population of one million or more; and one representative of property and casualty insurers who write automobile insurance in this state. Members serve terms of six years, with the terms of two or three members, as appropriate, expiring on February 1 of each odd-numbered year. This announcement is for the eight aforementioned positions.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone (512) 475-4765, FAX (512) 475-2874 or Email advisory.boards@license.state.tx.us. Applications may also be downloaded from the Department website at: www.license.state.tx.us.

Applicants may be asked to appear for an interview; however any required travel for an interview would be at the applicant's expense.

TRD-200703365
William H. Kuntz
Executive Director
Texas Department of Licensing and Regulation
Filed: August 1, 2007

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Texas Lottery Commission

Public Comment Hearing Notice

A public hearing to receive public comments regarding proposed repeal of 16 TAC §402.500, relating to General Audit Rule, proposed new 16 TAC §402.715, relating to Compliance Audit, and proposed new 16 TAC §402.708, relating to Dispute Resolution, will be held on Tuesday, August 21, 2007, at 11:00 a.m. at the Texas Lottery Commission, Commission Auditorium, First Floor, 611 E. Sixth Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-200703271
Andy Marker
Chief, General Counsel Section
Texas Lottery Commission
Filed: July 27, 2007

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Texas Parks and Wildlife Department

Notice of Hearing and Opportunity for Public Comment

The Texas Parks and Wildlife Department (TPWD) is accepting public comment on the application of Vulcan Construction Materials, L.P. to renew a TPWD permit to dredge state-owned sand and gravel from the bed of the Brazos River in Austin and Fort Bend counties at a location approximately seven miles downstream from the Interstate Highway 10 crossing and 23 miles upstream from the U.S. Highway 59 crossing.

The department will hold a public hearing on the application at 11:00 a.m. on Wednesday, September 12, 2007 at TPWD Headquarters, 4200 Smith School Rd., Austin, TX 78744. The hearing is not a contested case hearing under the Administrative Procedure Act.

Written comments must be submitted within 30 days of the publication of this notice in the *Texas Register* or the newspaper, whichever is later, or at the public hearing.

Written comments, questions, or requests to review the application should be sent to Beth Hilliard, 4200 Smith School Rd., Austin, TX 78744; FAX (512) 389-4482; e-mail, beth.hilliard@tpwd.state.tx.us.

TRD-200703350
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: August 1, 2007

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Texas State Board of Pharmacy

Request by Drug Manufacturer for Inclusion of a Drug on List of Narrow Therapeutic Index Drugs

On July 25, 2007, the Texas State Board of Pharmacy received a letter from Novartis Pharmaceuticals Corporation requesting that all for-

mulations of Neoral and Sandimmune be placed into consideration for inclusion on the list of narrow therapeutic index drugs.

This notice is posted in compliance with Senate Bill 625.

TRD-200703258
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: July 27, 2007

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Texas Public Finance Authority

Notice of Public Hearing TPFA CSFC Education Revenue Bonds (Uplift Education) Series 2007A

Notice is hereby given of a public hearing to be held on behalf of the Texas Public Finance Authority Charter School Finance Authority on Friday, August 24, 2007 at 9:00 a.m. in the Conference Room, Suite 411 at the Texas Public Finance Authority, William P. Clements State Office Building, 300 W. 15th St., Austin, Texas78701, with respect to the captioned bonds (the "Bonds") to be issued in a principal amount not to exceed $13,000,000 by Texas Public Finance Authority Charter School Finance Corporation. The proceeds of the Bonds will be loaned to Uplift Education (formerly known as the Lift Education, formerly known as The North Hills School), a Texas non-profit corporation, 606 E. Royal Lane, Irving, Texas 75039 (the "School") for the purpose of (a) acquisition, site improvements, design, renovation and equipment of educational facilities at the Peak Preparatory Academy Campus located at 4605 Live Oak and 4536 Bryan Street, Dallas, Texas 75204, including the construction of an approximately 13,675 square-foot wing on the existing middle- and primary-school building containing 12 new classrooms and the construction of a new, approximately 21,118 square foot high-school building containing 12 new classrooms; (b) acquisition, site improvements, design, renovation and equipment of educational facilities at Williams Preparatory located at 1750 Viceroy, Dallas, Texas 75235, and refinancing the note associated therewith; (c) the acquisition, site improvements, design, renovation and equipment of educational facilities at Hampton Preparatory located at 8915 South Hampton Road, Dallas, Texas 75232, and refinancing the note associated therewith; (d) the acquisition, site improvements, design, renovation and equipment of educational facilities at Summit International Preparatory located at 1100 Roosevelt Road, Arlington, Texas 76011, and refinancing the note associated therewith, (e) funding a debt service reserve fund or the purchase of a Reserve Fund Surety Policy and (f) paying the costs of issuance of the Bonds. The exclusive owner and operator of the Project is and will be the School. The public hearing will be conducted by Judith Porras, General Counsel of the Texas Public Finance Authority, or her designee (the "Hearing Officer"). All interested persons are invited to attend such public hearing to express their views with respect to the above-described project and the Bonds. Questions or requests for additional information may be directed to the Hearing Officer (telephone: (512) 463-5681). Any interested persons unable to attend the hearing may submit their views in writing to the Hearing Officer prior to the date scheduled for the hearing. This notice is published and the hearing is to be held in satisfaction of the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended.

TRD-200703368
Kimberly Edwards
Executive Director
Texas Public Finance Authority
Filed: August 1, 2007

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Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On July 27, 2007, Intrado, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60317. Applicant intends to reflect a change in type of provider to include voice services.

The Application: Application of Intrado, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 34570.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 15, 2007. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34570.

TRD-200703339
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 31, 2007

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Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority

On July 20, 2007, Central Texas Technologies, L.P. filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60437. Applicant intends to relinquish its certificate.

The Application: Application of Central Texas Technologies, L.P. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 34543.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 15, 2007. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34543.

TRD-200703299
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 27, 2007

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Notice of Application to Amend Certificated Service Area Boundaries in Kendall County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 25, 2007, for an amendment to certificated service area boundaries within Kendall County, Texas.

Docket Style and Number: Joint Application of Bandera Electric Cooperative, Inc. and Central Texas Electric Cooperative, Inc. to Amend

a Certificate of Convenience and Necessity for Service Area Boundaries within Kendall County. Docket Number 34559.

The Application: Central Texas Electric Cooperative (CTEC) is unable to secure the easements necessary to serve a residential property. Bandera Electric Cooperative, Inc. (BEC) seeks to amend the service area boundaries to provide service to the residential location that is within CTEC's service area. CTEC is in full agreement with the territory amendment.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than August 17, 2007 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 34559.

TRD-200703306
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 27, 2007

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Notice of Correction--Request for Proposals to Assist the Texas P.U.C. with Day-to-Day Operation of the ERCOT Wholesale Electricity Market and Implementation of the Nodal Market Design

The Public Utility Commission of Texas (commission or PUC) published notice of the Request for Proposals to Assist the PUC with the Day-to-Day Operation of the ERCOT Wholesale Electricity Market and Implementation of the Nodal Market Design (RFP) in the August 3, 2007 issue of the *Texas Register*.

The PUCT is amending the notice to inform potential proposers that the requested consulting services relate to services previously provided by a consultant.

The PUCT is also amending the stated selection criteria as follows:

The PUCT shall make the selection and award on the basis of:

- proposer's demonstrated knowledge, competence, qualifications, and experience to provide the services outlined in Attachment A;

- proposer's experience in analyzing issues related to the design and operation of wholesale electricity markets, particularly the ERCOT market;

- proposer's previous history, if any, working with the PUCT;

- issues related to conflicts of interest, if any; and

- the reasonableness of the proposed fee.

All other factors being equal, preference will be given to a proposer whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state.

Requesting the Proposal. A complete copy of the RFP may be obtained by written request to Ben Delamater, Purchaser, Public Utility Commission of Texas, William B. Travis Building, 1701 North Congress Avenue, Austin, TX 78701, or by fax (512) 936-7058, or by e-mail ben.delamater@puc.state.tx.us. You may also download the RFP from the PUC website www.puc.state.tx.us, by choosing "Procurement/HUB" from the menu on the right, and from the Electronic State Business Daily website at http://esbd.tbpc.state.tx.us.

TRD-200703337
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 31, 2007

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Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on July 24, 2007, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on or about August 3, 2007.

Docket Title and Number: Application of Central Telephone Company of Texas d/b/a Embarq for Approval of LRIC Study to Introduce Call Line Identifier Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 34555.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 34555. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34555.

TRD-200703298
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 27, 2007

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Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.215

Notice is given to the public of the filing on July 26, 2007, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215. The Applicant will file the LRIC study on or after August 6, 2007.

Docket Title and Number: Application of Verizon Southwest, Inc. for Approval of LRIC Study for ISDN-PRI Nonrecurring Charges Pursuant to P.U.C. Substantive Rule §26.215, Docket Number 34566.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 34566. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 34566.

TRD-200703331
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 30, 2007

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Notice of Proceeding for 2007 Annual State Certification for Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds

Notice is given to the public of the 2007 annual certification proceeding initiated by the Public Utility Commission of Texas for state certification of common carriers as eligible telecommunications carriers (ETC) to receive federal universal service funds (FUSF).

Docket Title and Number: Designation of Common Carriers as Eligible Telecommunications Carriers (ETC) to Receive Federal Universal Service Funds Pursuant to the Federal Communications Commission's Fourteenth Report and Order Adopting a State Certification Process. Docket Number 24481.

The Public Utility Commission of Texas (commission) initiated this proceeding in response to the Federal Communications Commission's (FCC) Fourteenth Report and Order adopting a state certification process. Under Section 254(e) of the Federal Telecommunications Act (FTA) carriers must use federal universal service support "only for the provision, maintenance, and upgrading of facilities and services for which the support was intended." The FCC concluded that it is appropriate for the state to certify that all federal high-cost funds flowing to rural carriers within the state of Texas are being used in a manner consistent with FTA §254(e). The commission is required to file such annual certification with the FCC and the Universal Service Administrative Company (USAC) on or before October 1 of each year. Absent such certification, carriers will not receive federal universal service support.

The certification requirement is applicable to all rural carriers and competitive eligible telecommunications carriers seeking high-cost support in the service area of a rural local exchange carrier that the state commission certifies as eligible to receive federal high-cost support during that annual period. In accordance with P.U.C. Substantive Rule §26.418(j), carriers shall certify directly to the commission in the form of a sworn affidavit executed by a corporate officer which certifies that the carrier is complying with the federal requirements for the receipt of FUSF support. All carriers within the state of Texas that request certification by the commission shall submit an affidavit on or before September 1st of each year.

Therefore, on or before Tuesday, September 4, 2007, carriers seeking to be certified should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free at 1-800-735-2989. Persons contacting the commission regarding this certification proceeding should refer to Docket Number 24481.

TRD-200703338
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 31, 2007

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Requesting Comments on Amended Form for Retail Market Performance Measure Reporting Pursuant to P.U.C. Substantive Rule §25.88

The Public Utility Commission (commission) proposes amendments to the form for Performance Measures Reporting required by P.U.C. Substantive Rule §25.88. The amended form will expand performance reporting by market participants to include data on the timely completion of field operations by Transmission and Distribution Utilities (TDUs), system reliability for the Electric Reliability Council of Texas (ERCOT), and the number and resolution of unauthorized changes of Retail Electric Provider (REP) reported by market participants, and will update the existing performance requirements to reflect changes to market processes. The amended form also includes reporting requirements regarding disconnections and reconnections for non-payment, which will replace the reports that are currently filed monthly in Project Number 29760, *Compliance Filings Relating to Disconnection of Electric Service Pursuant to PUC SUBST. R. 25.483(b)(2)(C)*. A measure relating to late billing has been removed from the form. The form is available on the internet at *http://www.puc.state.tx.us/electric/projects/33049/33049.cfm*.

The staff of the commission will conduct a public hearing and workshop on this amendment at the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, in the Commissioners' Hearing Room at 9:00 a.m. on September 7, 2007.

Comments on the proposed amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, TX 78711-3326, within 31 days after publication. Sixteen copies of comments on the proposed amendments are required to be filed pursuant to P.U.C. Procedural Rules §22.71(c). Reply comments may be filed within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed amended form. All comments should refer to Project Number 33049.

TRD-200703357
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 1, 2007

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Texas Department of Transportation

Notice - Temporary Cardboard Tags

Notice of Opportunity to Comment on implementation of Senate Bill 11, Article 8, relating to Temporary Cardboard Tags on Vehicles (80th Legislative Session, 2007).

The Texas Department of Transportation (department) staff is soliciting comments and suggestions on strategies for implementing the provisions of Senate Bill 11, Article 8, relating to a new method of issuing dealer, converter, and buyer's temporary tags. The new law will affect dealers, converters, the vehicle buying public, law enforcement, and other stakeholders. The bill requires the department to develop and maintain a secure, real-time database on persons to whom temporary buyer's tags are issued and vehicles to which temporary dealer and converter tags are issued, that may be used by a law enforcement agency in the same manner that the agency uses vehicle registration information.

Some issues the department has identified are: (1) development of a secure Internet access between dealers/converters and the department; (2) methods for collecting the $5.00 buyer's tag fee and remitting it to the department; (3) duration of dealer/converter tags; (4) record keeping requirements; (5) regulation of the dealer fee for buyer's tags; (6) method and quantity of issuing emergency tags; (7) methods of launching the new system across the state; and (8) the appearance of the new tags.

The department will hold a public meeting to discuss the implementation of Senate Bill 11. The meeting will be held from 9:00 a.m. to

11:45 a.m. on Friday, August 31, 2007 at Texas Department of Transportation, Riverside Campus, 200 East Riverside, Building 200, Room 1A1, Austin, Texas 78704. Any interested person may appear and offer comments. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print, or Braille, are requested to contact Brett Bray, Motor Vehicle Division, P.O. Box 2293, Austin, TX 78768, (512) 416-4800 or by facsimile at (512) 416-4890 at least two working days prior to the meeting so that appropriate services can be provided.

The department will also accept written comments concerning the implementation of these issues. Written comments should be addressed to Brett Bray, Director, Motor Vehicle Division, P.O. Box 2293, Austin, TX 78768 or by facsimile at (512) 416-4890. The deadline for receipt of written comments is 4:00 p.m. September 14, 2007.

The department will not respond individually to comments received pursuant to this notice. The information gathered from the written comments and the stakeholder meeting will assist the department in implementing the new requirements of the statute.

TRD-200703344
Bob Jackson
General Counsel
Texas Department of Transportation
Filed: August 1, 2007

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University of Houston System

Consultant Contract Award Notice

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, The University of Houston System for and in behalf of the University of Houston - Clear Lake furnishes this notice of consultant contract award. The consultant will provide services in the continued development of a comprehensive enrollment plan by improving the infrastructure necessary to improve retention and student success via the development (setup) of the academic advising module. Requests for proposals were filed in the May 18, 2007, issue of the *Texas Register*.

The contract was awarded to Noel-Levitz, Inc., 2101 ACT Circle, Iowa City, IA 52245, for a amount of $57,000.

The beginning date of the contract is August 1, 2007 and the ending date is July 31, 2009.

For further information, please call (281) 283-2150.

TRD-200703252
Brian S. Nelson
Executive Director and Associate General Counsel
University of Houston System
Filed: July 26, 2007

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).